

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2209.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2210.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2211.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,

Appellees.

Transcript of Report FILED

VOLUME VII.

JAN 23 1913

(Pages 2401 to 2800 Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

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(Testimony of C. W. Robnett.)

Q. If you could get that done you ought to go over and testify for the Government; is that right?

A. To testify to the facts as they really were.

Q. Now, when was the first conversation you had with Smith and Watt after you had your talk with Johnson?

A. Why, in the next day or so. Mr. Johnson said he wanted me to talk with the Government men, and he would arrange a meeting for me to see them and talk in his presence. So the next day or two we had a [2131—1801] meeting in Mr. Johnson's office.

Q. What was said at that meeting?

A. They asked me a number of questions in regards to the timber transactions, and mentioned the different claims, and I gave them a kind of a statement covering the field in general, which they took down.

Q. Was that statement written out?

A. It was written out later on.

Q. And what was done with that statement?

A. Why, I presume that they still have it.

Q. Who has it? A. The Government officials.

Q. The statement was signed by you, was it?

A. No, sir.

Q. It was not signed by you at all? A. No, sir.

Q. Have you seen that statement since you came to Spokane to attend this hearing? A. No, sir.

Q. Did you take that statement home with you?

A. No, sir.

Q. Did you take a copy of it home with you?

A. No, sir.

(Testimony of C. W. Robnett.)

Q. Have you read it over since the statement was made?

A. Only partially. I read part of it, I think, at Boise.

Q. Now, didn't you testify at Boise that you took a copy of it home with you? A. No, sir.

Mr. GORDON.—Your reference was, though, to the hearing here in Spokane a few days ago.

Mr. TANNAHILL.—No; I am referring to down to Lewiston. Did you get a copy of it and take it home with you when you was in Lewiston?

A. No, not according to my recollection. [2132—1802]

Q. You are positive of that, are you?

A. Yes, sir; I don't think I did.

Q. And if you testified to that in Boise that statement isn't true, is it?

A. Why, I don't recall taking it home.

Q. Now, could you have taken a copy of it home?

A. There might have been a copy of it given me, but I don't recall it.

Q. Now, was that statement corrected after you made it, after it was written up for you?

A. No, I don't know that there was any changes made in it. I never signed any statement.

Q. And have you made more than one statement?

A. Yes; I have made several.

Q. And when did you make the next statement; that is, that was written out?

A. Why, all the evidence—there was for several days when we met at different times—whatever evi-

(Testimony of C. W. Robnett.)

dence I give or whatever statements I made in regards to the transactions was written down—taken down in shorthand and put on the typewriter later on.

Q. Did you take any of those statements away with you, or copies of them?

A. Well, yes, there has been one or two statements handed me later than that, I think. I don't think I got the first one, but later there was one or two handed me, but I don't think I read them; I stuck them in my pocket, and that was all there was to it.

Q. Now, you say you didn't read them?

A. Why, if I did I just glanced at them.

Q. Don't you know that you read them and studied them? A. No, sir, I never studied them at all.

Q. You never studied them at all?

A. No, sir. [2133—1803]

Q. Now, Mr. Robnett, can you mention any other conversation that you have had with any other Government official relative to any favors that might be shown you?

A. No, nothing except along on the lines that I have mentioned.

Q. Well, is there anything that you haven't testified to that you can think of?

(No answer.)

Q. You have talked about immunity several times, haven't you?

A. I have talked about it along on the evidence and the way that the evidence was coming out. I talked at different times in regards to the evidence that would be submitted, but nothing in regards to

(Testimony of C. W. Robnett.)

immunity or anything of that kind.

Q. Now, Mr. Robnett, you don't expect the Government to prosecute you as vigorously, in view of the fact that you have testified for the Government, as you would if you had not testified—as they would if you had not testified—do you?

A. I don't know. I don't know just exactly what their attitude is going to be in regards to that.

Q. Well, you don't expect them to prosecute you as vigorously and be as severe on you as they would if you had not testified for the Government, do you?

A. Well, I don't know that they would be.

Q. Well, you don't think they would be, do you?

A. No, I don't know as they would, but I have no assurance that they won't.

Q. Well, how do you feel about it yourself?

A. My opinion and what they are going to do is two different things.

Q. Well, I am asking you how you feel about it, and what you expect?

A. Well, I feel like I am doing my duty.

Q. And you feel that they will be easier on you by reason of you [2134—1804] testifying for the Government, don't you?

A. Well, they may in some ways.

Q. Well, don't you feel that way yourself?

A. Well, I feel more easy about it in doing my duty.

Q. Well, but what do you expect the Government to do, that is what I am asking you? Don't you feel that they will not prosecute you as severely as they

(Testimony of C. W. Robnett.)

would if you had not testified for them?

A. Well, it might have some effect, yes.

Q. Now, you knew at the time you employed Mr. Johnson that he was friendly with Mr. Smith and Mr. Watt and the special agents who had been working on these bank cases, did you not—or who had been working on these timber cases?

A. No, I don't know that he was friendly with them, for the simple reason that he had only met them once prior to that time.

Q. Well, they had been around Lewiston for some time prior to that time, hadn't they?

A. Yes, but he had been in the mountains.

Q. But you knew that they were holding out in his office there a good deal, didn't you?

A. Yes—this is from Mr. Stucki.

Q. And you had had some conversations with Stucki about it, had you? A. No, sir.

Q. Now, one of your objects in telling them that you thought of employing Johnson was to see how they felt about it, was it not? A. Yes.

Q. And if they had told you that you had better not employ Johnson, but suggested someone else, you would have employed the one that they suggested, wouldn't you?

A. I might have taken it under consideration. It is hard to tell what I would have done at that time.

Q. Well, you feel now that you would have, don't you? [2135—1805]

A. Well, yes, I might have, to work with the Government. I would want to have somebody that could

(Testimony of C. W. Robnett.)

work in peace with them.

Q. Sure, and that was about the time that you made up your mind to work for the Government, isn't it?

Mr. GORDON.—He didn't say to work for the Government; he said "work with the Government."

Mr. TANNAHILL.—Well, work with the Government, then.

A. Yes, about that time.

Q. Now, have you been engaged in doing any work for the Government? A. No.

Q. You haven't done any work for them at all?

A. No, I haven't worked for the Government exactly, only in giving my evidence. I haven't received any pay in working for the Government any more than witness fees.

Q. How much witness fees have you received from the Government?

A. I don't know—just whatever I have been subpoenaed on these different occasions.

Q. Have you received any money that came from the Government indirectly?

A. That came from the Government indirectly?

Q. Yes, aside from your witness fees?

A. Not from the Government I haven't.

Q. Did you receive \$100.00 from Miles Johnson?

A. No, sir.

Q. Did you receive \$100.00 through Miles Johnson that came from the Government indirectly?

A. No, sir.

Q. Did you receive any money from Miles Johnson at all?

(Testimony of C. W. Robnett.)

A. It didn't come from the Government.

Q. Well, did you receive any from him at all?

A. I received \$40.00 that was advanced to Mr. Arnold—money [2136—1806] that I had advanced to him.

Q. Where did Arnold get it from?

A. He was working for the Government; but he was simply paying it out just the same as anyone else paying his just debts.

Q. Well, Arnold got it from the Government, and you got it from Arnold?

A. Well, Arnold was working for the Government, I presume, at that time. The Government had nothing to do with him paying me.

Q. Well, he paid you the money that he got from the Government; is that right?

A. Well, he made arrangements to have the money advanced by Mr. Johnson, and he paid Mr. Johnson.

Q. What was Arnold doing for the Government?

A. That is not a question for me to answer. I don't know what he was doing.

Q. Then, Arnold got the money from the Government, and paid it to Johnson, and Johnson paid it to you? A. Well, Johnson advanced it.

Q. How? A. Johnson advanced it beforehand.

Q. Now, have you got any other money that came indirectly from the Government?

A. No, nothing—Arnold paid me \$50.00 is all that I have ever received from him.

Q. And how did Arnold get that from the Government? A. Why, working for it.

(Testimony of C. W. Robnett.)

Q. What was he doing for it?

A. Well, I don't know.

Q. When did he pay you that \$50.00

A. Since I have been in Spokane.

Q. Since you have been in Spokane? Well, about when was it? You have been here a good while.

[2137—1807]

A. I think it was perhaps in May.

Q. 1910? A. Yes.

Q. And what particular officer did Arnold get it from?

A. I presume he got his checks the way he got his money—a check from the Government is all I know. I don't know how he is paid.

Q. Do you know the particular officer that issued the check?

A. No; I never inquired into how he got his pay, or anything about it.

Q. You never inquired into how he got his pay?

A. No, sir.

Q. Well, now, did you get any other money indirectly from the Government? A. No, sir.

Q. How? A. No.

Q. You can't think of any other money that has come to you that came in an indirect way from the Government—except your witness fees, of course?

A. I don't consider that that came from the Government.

Q. Well,—

A. Any more than anybody else's pay under those conditions.

(Testimony of C. W. Robnett.)

Q. Well, did you get any other money in the same way? A. No, sir.

Q. You are sure of that, are you?

A. Not to my recollection, I don't recall any.

Q. Well, will you say that you have not got any money in the same way? A. Yes.

Q. You are sure of that, are you? A. Yes.

Q. Well, now, can you give us an idea of about how much you have [2138—1808] drawn in witness fees?

A. No, I don't know just what I have drawn.

Q. Have you any idea how much you have drawn?

A. No. I think—one time I was entitled to about \$60.00, and another time something like \$40.00, and when I went to Boise I don't recall just exactly what that was, and when I was down to Lewiston there was the time I was down there at \$3.00 a day.

Q. About how much did you draw each time?

A. That was somewheres around \$69.00 or \$79.00, somewhere around there. I haven't got it yet, all of it.

Q. Well, what did you get at Boise?

A. Why, somewheres I think around \$90.00. I wouldn't be positive, though. No, it wasn't that much; it was somewheres around \$60.00.

Q. Well, what else have you drawn in witness fees? A. Well, that's all.

Q. Can you tell of anything else that you have drawn? A. No, I don't recall anything.

Q. Now, then, have you received any money personally from Mr. Johnson in the last year? Has he

(Testimony of C. W. Robnett.)

let you have any money?

A. No, nothing except an advance on some witness fees—Lewiston witness fees—about \$28.00.

Q. How much? A. \$28.00.

Q. Well, now, have you received any other money from him? A. No, sir.

Q. Have you received any money personally from Mr. Smith or Mr. Watt in the last year?

A. No. At Moscow I got I think a loan of \$3.00, or \$2.00, or something like that from him, practically is all, which I paid back.

Q. Now, have you received any other moneys from them?

A. No, sir, not to my recollection. [2139—1809]

Q. Then, you have received an aggregate of about \$380.00 from the Government. Do you think that now is all you have received from the Government, directly or indirectly? That includes, of course, the \$40.00 of Arnold—of Johnson—and the \$50.00 you say Johnson paid.

Mr. GORDON.—\$100.00? He didn't say anything about \$100.00 from Johnson.

Mr. TANNAHILL.—No—\$40.00 from Johnson, and \$50.00 from Arnold.

WITNESS.—No; I said Johnson gave me \$10.00 more, which made that \$50.00 he paid.

Q. Oh, that was it? A. Yes, sir.

Q. Now, you think that is all the money you have got, either directly or indirectly, from the Government, do you?

A. Why, I don't recall of anything further. I

(Testimony of C. W. Robnett.)

never got any money directly from the Government except the witness fees which I was entitled to, and which everybody else drew that was a witness.

Q. Now, Mr. Robnett, do you remember of testifying at Boise that the reason you employed Mr. Johnson was that he was in a position to give you better protection than anyone else? That was the substance of the question, to which you answered—

Mr. GORDON.—Read the whole question, will you?

Mr. TANNAHILL.—Oh, it is a long question. I don't want to read all that. "His position as an officer of the Government. I knew that he was capable of defending me better than any other person I could go to." "Question. And you thought if there was any favors to be shown you by the Government that Mr. Johnson was in a better position to get those favors than anyone else you knew of, did you not?" "Answer. Yes, sir, he might have been." You so testified, did you?

A. Yes.

Q. And you think that is true, too, don't you?

A. Yes, sir.

Q. Now, Mr. Robnett, have you read your evidence over since you [2140—1810] came to Spokane? A. No, sir.

Q. The evidence you gave at Boise?

A. No, sir.

Q. You haven't read it over at all?

A. No, sir, not in Spokane.

Q. Not in Spokane?

(Testimony of C. W. Robnett.)

A. No; I haven't seen it.

Q. Have you read the evidence over that you gave at Boise at all?

A. I read it over once at Lewiston.

Q. At Lewiston? A. Yes, sir.

Q. And have you read it over more than once?

A. No, sir.

Q. How long ago has it been?

A. Oh, about the 25th or 26th—somewheres around the 20th and 30th of last month.

Q. And have you talked your evidence over with anyone since you came to Spokane? A. Yes.

Q. Who have you talked it over with?

A. With Mr. Gordon.

Q. And with anyone else? A. With Mr. Smith.

Q. And with anyone else?

A. And Mr. Watts, perhaps—the three of them.

Q. How many times have you talked it over with them?

A. Oh, the only time that has been talked over was Tuesday evening for about perhaps three quarters of an hour.

Q. Now, can you give us the number of times you have talked your evidence over with either of these gentlemen?

A. You mean in Spokane? [2141—1811]

Q. Yes.

A. Why, that is the only time we went over anything in a general way. They may have been asking questions at different times since then as to certain transactions.

(Testimony of C. W. Robnett.)

Q. And they have called your attention to certain evidence that they thought you knew something about, and you have told them about that, have you?

A. Yes, sir.

Q. And those conversations that you say you had with Frank Kettenbach, where you say you told him about your fraudulent transactions, and the perjury and subornation of perjury in relation to these claims that you deeded to the Lewiston National Bank; did you talk that over with anyone?

A. No, nothing more than that Mr. Gordon asked me if Mr. Kettenbach knew about the condition those claims were in, and I told him he did, and that's all that was said.

Q. And did Mr. Smith and Mr. Watt talk with you about it? A. No, sir.

Q. And what did you tell Mr. Gordon that you told Frank Kettenbach?

A. Why, he didn't state any conversation; he just simply asked me if Frank Kettenbach was aware of the conditions under which those claims were obtained and I told him he was, and that's all that was stated.

Q. You didn't tell him what you told on the witness-stand, did you? A. No, sir; I wasn't asked.

Q. Now, what was the language that was used when you told Frank Kettenbach about it?

A. How is that?

Q. What was the language that was used when you told Frank Kettenbach about it? What did you say, and what did he say? [2142—1812]

(Testimony of C. W. Robnett.)

A. Well, Frank asked me just what the condition was under which those claims were taken up, and I said "It is similar to the rest of them there." I told him that I had paid Mr. Waldman \$375.00, and had agreed to pay him \$400.00, and that I had paid Gordon—

Mr. GORDON.—I wish you would give that gentleman's first name, so that people won't suspect that it is me.

WITNESS.—(Laughing.) E. F. Gordon.

Mr. TANNAHILL.—Q. Now, what else did you tell him?

A. Well, that there was nothing to interfere in regards to the claims as long as—there was nothing those parties would never testify for the Government, and there wasn't any danger of me testifying for the Government, and that everything was all right, and that the patents had been issued, and as far as I knew there wasn't any question.

Q. Well, what else did you tell him?

A. I don't know that there was anything further stated.

Q. Well, that is all the conversation that occurred between you and Frank Kettenbach, is it?

A. Why, perhaps other matters were brought up and discussed, but it was in a general way—nothing particularly.

Q. You can't think of anything else that you told Frank Kettenbach about it?

A. No, I don't recall right just now.

At this time a recess was taken until to-morrow

(Testimony of C. W. Robnett.)

morning at ten o'clock. [2143—1813]

The hearing was resumed at ten o'clock A. M., Friday, September 16th, 1910.

CLARENCE W. ROBNETT, recalled for further cross-examination, testified as follows:

Mr. TANNAHILL.—Q. Mr. Robnett, you testified in your direct examination concerning some conversation you overheard between Kester and Kettenbach some time in the spring of 1902, relative to their taking up timber claims or going into the timber business. What was that conversation that you say you overheard?

A. Why, it was between Mr. Kester and Mr. Kettenbach, along in the spring of 1902. George says to Will, "I think that we can make some money out of the timber provided that we can make the connections and form a partnership with Mr. Dwyer and him tend to the business in the timber and we will furnish the money and get the entrymen to file on the timber, and pay them from \$100.00 to \$200.00 for their right; I think there is a number of entrymen that can be obtained that way."

Q. Now, that was the language that was used, as near as you can remember it, is it?

A. Why, that is the substance of the conversation, practically the language.

Q. Now, can you think of anything else that was said in that conversation?

A. Yes. Mr. Kester spoke about, stated that Mr. Dwyer was a thorough timber man and had had ex-

(Testimony of C. W. Robnett.)

perience in the east in timber transactions and the cruising of timber, and he also had certain knowledge in regards to the timber in the Clearwater Country, he had [2144—1814] already filed one or two contests, and was holding down a homestead up there at that time, and also had cruised out some timber, and there was a number of entrymen that could be obtained to sell their right.

Q. Now, what else?

A. Will says, "Well, George, you see Mr. Dwyer and have a talk and go into the matter, and I am perfectly willing for us to go into the timber, and we will furnish the money and Mr. Dwyer do the work in the timber and take the people up and locate them."

Q. Anything else?

A. No, I don't know but what that is practically all; that is all that I recall just at this moment.

Q. That is all you recall that was said in that first conversation?

A. Just at the present time, yes.

Q. And this was related in that first conversation?

A. Yes, sir.

Q. When was that?

A. That was along some time in March or April of 1902.

Q. Who else was present at that time?

A. You mean in the bank?

Q. Yes.

A. I don't know; it was along in the afternoon. I presume the balance of the clerical force was there.

(Testimony of C. W. Robnett.)

Q. Well, who else was there?

A. It would be Mr. Bradbury—

Q. John Bradbury? A. John Bradbury.

Q. Where was he in the bank?

A. Why, he would be there at his work, perhaps over there at the cashier's window.

Q. Have you any distinct recollection of Bradbury being there? [2145—1815]

A. No, I wouldn't say that he was there or wasn't; I don't know.

Q. Who else was there?

A. I couldn't say there was anybody else there.

Q. What other clerical force did you have there?

A. At that time I don't know as there was any other. That was before Mrs. Barnes came in, I think,—yes, before Mrs. Barnes came into the bank; and I don't know as we had any other clerical force.

Q. Well, this was during banking hours, was it not?

A. I wouldn't say whether it was,—I think it was just about the time of the closing of the bank, right along that time anyway, just some time in the afternoon before we went home.

Q. You closed the bank in the evening, didn't you?

A. We closed the bank at that time at four o'clock.

Q. Now, you can't think of anyone else who was in the bank at that time?

A. I don't recall of any one at the present time.

Q. Do you remember of anyone coming into the bank during this conversation?

(Testimony of C. W. Robnett.)

A. No, sir, I do not.

Q. If anyone came into the bank there must have been someone else there, must there not, to wait on them?

Mr. GORDON.—I object to that as argument.

Mr. TANNAHILL.—Q. Kester and Kettenbach being engaged in this conversation and you engaged in listening to them?

A. Well, if anybody came in there Mr. Bradbury could have waited on them; of course, it was just the general routine of the bank, and, of course, it wouldn't impress it on my mind.

Q. It is your best recollection that Mr. Bradbury was there, is it? [2146—1816]

A. Why, I wouldn't say one way or the other, on account I don't know.

Q. Whereabouts in the bank did this conversation take place?

A. Why, close to the bookkeeper's desk.

Q. Whereabouts was the bookkeeper's desk?

A. It was running along the northwest side of the interior of the bank working-room, and also along the north side.

Q. What was you doing?

A. I was working on the depositors' ledger.

Q. What was you doing on the depositors' ledger?

A. Entering up checks and deposits, or carrying over the balances.

Q. You wasn't making any of these false entries that was involved in these bank matters, was you?

Mr. GORDON.—I object to that as not proper

(Testimony of C. W. Robnett.)

cross-examination, and as irrelevant and immaterial.

A. No, sir.

Q. You hadn't begun to make these false entries at that time, had you?

Mr. GORDON.—I object to that.

A. I decline to make any further explanations.

Q. For what reason do you decline?

A. It might lead to something which would incriminate me.

Q. You think that question would incriminate you or the answer to that question would incriminate you? A. It might lead to others that would.

Q. And you refuse to answer it by reason of the fact that it might incriminate you?

A. Under the conditions of the indictments in existence.

Q. There is such indictments pending against you? A. Against me and others. [2147—1817]

Q. Now, what did you say you was doing on the depositors' ledger?

A. Entering up checks and deposits, or carrying over the balances, doing the work on the depositors' ledger.

Q. Whereabouts was Kester and Kettenbach, in relation to the desk? A. At one end of it.

Q. How far from the end of it?

A. Well, Mr. Kester was leaning up against the desk, and Mr. Kettenbach was standing right beside it; perhaps both of them were leaning on the end of the desk.

Q. They were *they* where, if there was any

(Testimony of C. W. Robnett.)

clerical force in the bank, they could have heard their conversation? A. Very likely.

Q. Mr. Bradbury could have heard it from his station where he worked?

A. Very likely, yes, sir.

Q. That was the first conversation you had ever heard in regard to going into the timber business?

A. Well, no,—well, it might have been in regards to going into the timber business, but timber matters had been discussed in different ways a great deal.

Q. That is the first discussion you had heard relative to Kester and Kettenbach going into the timber business in that way?

A. Yes, of getting entrymen to file on the land and Mr. Dwyer to do the cruising on the timber.

Q. What did you hear discussed before that? I want the first talk you heard regarding them going into the timber business.

A. I said that was the first conversation that I have any recollection of them wanting to get entrymen to file on the timber. They had talked about the different people around Moscow who had went [2148—1818] out and taken up claims and made money at it, and the ready sale they had found for the timber.

Q. They talked that over in this conversation?

A. No; prior to that. It was common conversation in regards to the profits that were being made out of the timber, and had been for some little time.

(Testimony of C. W. Robnett.)

Q. Now, do you remember any particular conversation?

A. No, I don't particularly remember any conversation prior to that time, any more than it was brought up and discussed at a great many different times.

Q. Well, now, Mr. Robnett, that is the first conversation that you can remember or recall between Kester and Kettenbach in regard to these timber matters, is it?

A. Entering into the timber business, relative to locating, yes, sir.

Q. Well, you don't seem to be able to repeat any conversation you ever heard before that regarding any timber matters at all. You say it was discussed, but now I want the discussion, if you can remember it.

A. Why, I can perhaps make statements that had taken place in the different conversations, relative to the timber, but I can't give any definite time.

Q. Well, I don't want any guesswork, Mr. Robnett. A. Well, there is no guesswork about it.

Q. I want to know the conversations you heard; if you heard any conversations before that I want to know it.

A. I could repeat statements that was fastened in my mind, knowing that the timber had been discussed.

Q. I want any statement you heard Kester and Kettenbach make before that, before this one you have just testified to.

(Testimony of C. W. Robnett.)

A. Why, I heard them discuss the matter with Nat. Brown, in [2149—1819] regards to certain entrymen at Moscow who had filed on timber claims and sold their claims, once or twice, when Mr. Brown was in the bank there.

Q. What was said?

A. I don't recall the names of the entrymen, but they spoke of certain parties at Moscow,—I think there was a man and his wife up there had taken up a timber claim; yes, there was a man and his wife, each one of them had taken up a timber claim, and the two of them had sold them for \$10,000.00, \$5,000.00 apiece, old growth white pine. That matter was discussed, and also a great many other entrymen around Moscow.

Q. When was that matter discussed with Brown?

A. It was prior to this time.

Q. About how long before this?

A. Along some time between the first of the year and March, the latter part of March.

Q. That was the same year you heard this conversation between them regarding them going into the timber business, was it? A. Yes, sir.

Q. Whereabouts in the bank did that take place?

A. Mr. Brown was standing outside of the window, and Mr. Kester and Mr. Kettenbach were talking to him through the assistant cashier's window.

Q. Both of them were inside the cashier's cage, were they?

A. There was no cage there; they was inside of the interior of the bank working-room, and Mr. Brown

(Testimony of C. W. Robnett.)

was out in the lobby, opposite the assistant cashier's window.

Q. Who else was in the bank at that time?

A. Why, I don't recall that there was particularly anybody in the bank; this was during banking hours.
[2150—1820]

Q. Was Bradbury in there? A. Very likely.

Q. Well, now repeat anything else that you can remember that was said at that time. As I understand you, Nat. Brown was telling them about some man and his wife up at Moscow that had each taken up a timber claim? A. Yes, sir.

Q. An old growth white pine claim?

A. Yes, sir.

Q. And they had sold it for \$10,000.00, \$5,000.00 a claim? A. Yes, sir.

Q. And they had made a good profit on it?

A. Yes, sir.

Q. What else was said?

A. They was discussing relative to some of the townships up in the Clearwater section that were still on unsurveyed land, and I believe Nat. Brown had either been up there or was going up there on this trip, and my recollection is that he stated that he was locating people on this unsurveyed land.

Q. Nat. Brown was?

A. Yes; that is, he had a number of claims up there and he was putting people on them and locating them.

Q. What else was said?

A. The character of the timber was discussed.

Q. What else was said?

(Testimony of C. W. Robnett.)

A. Why, also the time for the,—when those townships would likely be thrown open for filing, and how long a person would be apt to have to stay to hold their claims down that went up there, and the value of the timber.

Q. Who did Brown say he had located up there?
[2151—1821]

A. I didn't hear him make any statement as to just who he had up there or anything about that.

Q. How many did he say he had?

A. He didn't say.

Q. But he said he had located them on this—

A. He had a number of claims and was locating people up there.

Q. He had them himself?

A. That is, he was instrumental there in having some claims cruised out on that unsurveyed land and people located on them, and I believe he was the party that was doing the locating.

Q. He was representing the Clearwater Timber Company?

A. I don't think he was representing the Clearwater Timber Company at that time; I don't believe that company was in existence.

Q. He was representing some timber company, wasn't he? A. I don't know that he was.

Q. Don't you know that Nat. Brown has been representing a timber company since 1900?

A. He might have; I don't know anything about that, but he has been interested in knowing about the timber.

Q. How long did he say it would be before those

(Testimony of C. W. Robnett.)

people could file on the land and acquire title and sell it?

A. I don't recall just what time he gave.

Q. But he stated—

A. The time he thought it would take.

Q. About the time he thought it would take?

A. Yes, sir.

Q. Did he say who was paying the expenses?

A. No, sir.

Q. He said nothing about who was paying the expenses?

A. No, sir; my recollection would be that the people went up there [2152—1822] and filed on the,—paid him a location fee.

Q. Paid him a location fee? A. Yes, sir.

Q. What else did he say about their being located?

A. I don't recall.

Q. Did he state the number—

A. He wasn't talking to me; I was just simply—

Q. I understand that. Did he say how many he had located up there?

A. No, he did not; that is my recollection.

Q. Well, how many did you gather, from the conversation, that he had located up there?

A. That there was a great many people from Moscow had gone in there.

Q. A great many people from Moscow?

A. Yes, sir, a great many people.

Q. Did he say anything about the kind of timber it was?

A. Yes; the timber was all nice timber, running a large percentage of white pine.

(Testimony of C. W. Robnett.)

Q. How much did he say the claims were worth?

A. He said there was claims up there by the time a person proved up on them would be worth from four to six thousand dollars.

Q. Anything else he said? Anything else he said about it? A. Why, I don't know if there was.

Q. Did he say anything about the locality where these claims were?

A. It was up there in the white pine belt of the Clearwater country, in the townships that were unsurveyed.

Q. Did he say how far from the North Fork of the Clearwater? A. No, I don't recall that he did.

Q. Did he say which side of the Clearwater? [2153—1823] A. No, I don't know that he did.

Q. You didn't gather any information from the conversation as to which side of the Clearwater it was? A. No, sir, I do not know.

Q. Can you remember anything else that was said in that conversation?

A. No, I do not recall anything further at the present time.

Q. Now, mention any other conversation that you heard before this conversation that you say Kester and Kettenbach had at the corner of your desk.

A. I don't know as I can recall any particular conversation at the present time.

Q. Now, you have related everything that took place that you can think of that occurred that you heard between Kester and Kettenbach up to the time of this conversation which you say occurred at the end of your desk, have you?

(Testimony of C. W. Robnett.)

A. You mean up to the first conversation I gave?

Q. Yes.

A. I think so, that I can recall; I don't recall anything else at the present time.

Q. Now, think it over and see if you can think of anything else. I want everything you can think of that you have heard between these men or between them and anyone else in regard to timber transactions.

A. (Pause.) There was one conversation in regards to Mr. Dwyer between Mr. Kester and Mr. Kettenbach took place, in which they spoke of his contests.

Q. When was that?

A. That was before this conversation that I have referred to between them.

Q. Was it before or after the conversation between Kester and Kettenbach and Nat. Brown? [2154—1824]

A. It was after that.

Q. After that? A. Yes, sir.

Q. What was that conversation?

A. I don't know just what the conversation was except it was something relative though to Mr. Dwyer filing a contest, and that Mr. Kester told Mr. Kettenbach that he thought he was going to win out and that he knew quite a little about that timber in the Clearwater country,—

Q. What contest was that?

A. And in around the Potlatch. Why, I don't recall just who the entryman was; some contests filed either in the latter part of 1901 or the first part of 1902.

(Testimony of C. W. Robnett.)

Q. Where was the land located?

A. I think around in the Potlatch country.

Q. Do you know of anything else said about that?

A. No, I don't recall anything in particular at this time.

Q. Whereabouts in the bank did that take place?

A. In the main body there; I don't know just the exact location.

Q. Where was you at that time?

A. I was close enough to hear what they was saying.

Q. Well, where was you?

A. I was in the main body of the bank.

Q. What was you doing?

A. I presume I was working.

Q. You have no recollection about what you was doing?

A. At that time, I don't know just exactly what I was doing.

Q. Where was Kester and Kettenbach and Dwyer? A. Dwyer wasn't there. [2155—1825]

Q. That was Kester and Kettenbach, was it, that was doing that talking? A. Yes, sir.

Q. Where was that?

A. In the main body of the bank.

Q. You have no recollection about where they were? A. Not the exact location in the bank.

Q. Did you stop your work and listen to that conversation?

A. I don't know as I did. A person could go ahead and do his work and hear a conversation also

(Testimony of C. W. Robnett.)

a great many times.

Q. What clerical force was in the bank?

A. The same as I have stated before.

Q. Was Mr. Bradbury there?

A. Mr. Bradbury and myself and Mr. Kettenbach and Mr. Kester.

Q. Was there any other clerical force in the bank?

A. I don't recall any at the present time.

Q. Can you think of anything else, any other conversation that you heard?

A. No, I don't know as I can.

Q. Now, leading up to this conversation which you say you heard in regard to Kester and Kettenbach going into the timber, there was nothing really wrong discussed between them, was there?

A. You mean prior to that conversation or in that conversation?

Q. Prior.

Mr. GORDON.—I object to that, on the ground that it is asking for a legal conclusion, and not proper cross-examination.

WITNESS.—I didn't catch Mr. Tannahill's—

Mr. TANNAHILL.—Q. I say, up to this conversation which you say you heard Kester and Kettenbach discussing at the end of your desk, there was nothing [2156—1826] wrong discussed in these prior conversations, that you know of, that is, there was nothing that appealed to you as being wrong?

A. No, I don't recall anything at the present time.

Q. And you had not been interested in any wrong transactions yourself up to that time, had you?

(Testimony of C. W. Robnett.)

A. No; I hadn't been interested in the timber.

Q. And you had been strictly honest, straight and upright up to that time, hadn't you?

A. As far as I know, yes, sir.

Q. And Kester and Kettenbach both had a great deal of confidence in you? A. They did.

Q. Up to that time? A. Yes, sir.

Q. And neither one of them thought you would be guilty of doing anything wrong?

A. I don't know as they did.

Q. And you was a consistent member of the Methodist Church up to that time, and attended church regularly? A. I was, yes, sir.

Q. And you attended Sunday School regularly?

Mr. GORDON.—I object to that as not proper cross-examination, and filling up the record with a lot of immaterial stuff.

A. I presume I did.

Mr. TANNAHILL.—Q. And you took part in the Sunday School and in church work? A. I did.

Q. And your wife also took part in the Sunday School and church work?

Mr. GORDON.—I object to the character of work his wife took [2157—1827] part in, as not proper cross-examination and entirely irrelevant.

A. My wife never took a very active part in church work; she always went to church.

Mr. TANNAHILL.—Q. Now, this conversation you say you heard between Kester and Kettenbach and Dwyer, that did appeal to you as being wrong, didn't it, this conversation about them going into the

(Testimony of C. W. Robnett.)

timber and getting men to sell their rights and sell their claims to them, and getting hooked up with Dwyer, that did appeal to you as being wrong?

A. Well, to a certain extent, a violation of the law as it was construed, yes, sir.

Q. And they stood right up there in the bank at the end of your desk, in your hearing, and discussed this wrong and illegal transaction, and from the nature of the conversation that was their first thought of going into that wrong transaction?

A. It was discussed there the first time they discussed it in my presence, yes, sir.

Q. From the nature of the conversation, as you have related it, it is your impression that that is the first conversation they had about it, is it not?

A. I don't know; I think perhaps the thought had been in their minds before, and perhaps they had discussed it, but hadn't come down to any definite action.

Q. But they came out and related their whole scheme and their whole plan there in your presence, and at a time when they had never known of you doing a wrongful act or having a wrongful thought?

A. Yes, sir; as I have stated.

Q. Well, now, then, Mr. Robnett, you remember testifying at Boise in the criminal trial of Kester, Kettenbach and Dwyer involving this same land, do you not? [2158—1828]

A. Yes, sir; I testified at Boise.

Q. Do you realize that you have testified to about four times as much in these conversations at this trial as you testified to at Boise in this one conversation?

(Testimony of C. W. Robnett.)

A. Why, I may have, yes; I might have testified more here.

Q. Do you realize that your evidence is materially different now from what it was then?

A. Not in the main phase of it, I don't think so.

Q. Don't you realize that your evidence is different now from the evidence you gave on direct examination in this hearing?

A. No; I don't know as it is.

Q. You testified at Boise: "Now, state what that conversation was." This is referring to the conversation in March or April, 1902. "Why, it was—there had been a good deal of discussion relative to timber—"

Mr. GORDON.—What page?

Mr. TANNAHILL.—359.

Q. —"and Mr. Kester spoke to Mr. Kettenbach and stated that 'I believe that we can make a great deal of money out of the timber, if we can get started into it right and get lined up with Mr. Dwyer, who thoroughly understands the timber.' " "Well, proceed. Was anything else said at that conversation?" " 'And there is money to be made in it. There are a great many people who are ready to dispose of *right* rights for a small consideration, and I think by working along that we can get quite a number to take up claims and make quite a little money out of it.' " "Now, was any mention made of any locality that they anticipated—?" "Why, yes, the locality at that time that was open to settlement and was discussed by them was around the Potlach, and out near

(Testimony of C. W. Robnett.)

Pierce.” “Question. Pierce, or Pierce City?”

“Answer. Pierce City.” “Question. Well, was anything discussed there at that time as to the method they were going to pursue?” “Answer. Why, [2159—1829] nothing, with the exception that they were to get people to take these claims that would sell their right.” “Question. Was anything said further at that conversation?” “Answer. Not to my recollection.” Do you remember that you so testified at Boise?

A. I so testified.

Q. Do you remember that you testified in this trial:

“Q. Now, what was the discussion that these two gentlemen had?

“A. The timber matters, of other people locating around from out of Moscow, and the people in Lewiston were commencing to get interested, so Mr. Kester and Mr. Kettenbach discussed it quite often, in regards to going into the timber business themselves, and brought up Mr. Dwyer’s knowledge of the timber, and that he was a timber man from the east, Minnesota, and so it kind of got to be general conversation there, until along in March, some time in March or April, why Mr. Kester and Mr. Kettenbach were talking about the timber situation, and they stated that they believed they could make a great deal of money out of the timber if they could get in connection with Mr. Dwyer and form a partnership and let Mr. Dwyer do all the work in the timber.”

Do you realize that you testified to no partnership at Boise, either on direct or cross-examination?

(Testimony of C. W. Robnett.)

A. Well, I may not have testified, but yet the testimony, I don't see where they conflict in any sense or any nature.

Q. Don't you remember that I cross-examined you at Boise and asked you to state everything you heard and everything you could think of in connection with this conversation, and that you never once stated that there was anything said about a partnership?

A. I don't state that it didn't take place because I didn't recall it at that time.

Q. Isn't it a fact that there was nothing said about forming a partnership with Dwyer? [2160—1830]

A. No; it took place. That was one of the statements in that conversation.

Q. Now, then, do you realize that you failed to testify at Boise that there was anything said in this conversation regarding the money end of the matter, the furnishing of the money?

A. Well, I might not have recalled it at that time.

Q. Will you testify now that this money transaction was discussed in this conversation?

A. Well, it was.

Q. It was? A. Yes, sir.

Q. Didn't you testify in your direct examination:

“Q. Now, was anything said at that time relative to the money end of the transaction?

“A. No, there wasn't anything said in regards to that. They went on ahead and stated though, talked about Mr. Dwyer's knowledge of the timber, and they spoke of some timber that he knew about, claims that he had already cruised and had knowledge of, said

(Testimony of C. W. Robnett.)

he could put people on.”

Which one of those statements is true?

A. I didn’t recall it, that it took place, but it also did; that was discussed in that conversation.

Q. Then, this statement you made yesterday was wrong, was it? A. There was an error there.

Q. And quite a material error there. You couldn’t even remember it after Mr. Gordon had called it to your attention? A. Why, I probably didn’t.

Q. And your recollection is better to-day than it was on yesterday, is it?

A. It seems to be, on that point, yes, sir.

Q. Mr. Robnett, did you discuss this particular conversation with [2161—1831] Mr. Smith before you went on the stand, since you came to Spokane, or since we have been engaged in the progress of this trial? A. No, sir.

Q. Never referred to it at all?

A. This particular conversation?

Q. Yes. A. No, sir.

Q. Did you discuss it with any of the Government officials? A. No, I didn’t.

Q. Did you discuss it with Mr. Watt?

A. No, sir.

Q. Did you discuss it with any of them at Lewiston? A. No.

Q. While we were taking evidence down there this month? A. No, sir.

Q. You had no discussion about it? A. No, sir.

Q. Now, didn’t you also testify:

“Q. Now, did they outline a scheme in that con-

(Testimony of C. W. Robnett.)

versation in your hearing?

“A. No, sir, not that I recall at the present moment.”

You testified to that on direct examination?

A. Well, I perhaps didn't recall it.

Q. Well, you have testified now, and related the conversation where the money was talked of and where the partnership was discussed, with Dwyer, and the whole business, in that one conversation. And you have stated, in response to Mr. Gordon's question, that that was not discussed in that conversation. How do you explain that?

A. I stated that I didn't recall it at that time.

Q. How does it happen that you can remember these conversations [2162—1832] in detail, remember what was said, where you was, and what you was doing, and all about it, and can't remember what you have testified to from one day to another?

A. Well, certain phases of it come up at different times as a person recalls the conversation.

Q. And that is a phase of it that came up in your testimony where you swore to it under oath?

A. That I didn't recall it?

Q. Yes.

A. Well, I didn't recall it at that time, but I do recall it this morning.

Q. Have you such a reckless disregard for your oath that you can't remember what you have testified to from one day to another?

A. Nothing of the kind; I have regards for my oath.

(Testimony of C. W. Robnett.)

Q. A very reckless regard for it, haven't you, Mr. Robnett? A. No, sir.

Q. Now, didn't you also testify on your direct examination:

“Q. Was there any conversation had relative to how they were to get this timber located? A. No.”

Do you remember making that statement, under oath, to Mr. Gordon, when he was asking you the question,—do you remember swearing to that in response to Mr. Gordon's question?

A. Yesterday, or the day before?

Q. Day before yesterday. A. I may have; yes.

Q. Well, now, was you lying when you said that?

A. No; I at that time didn't recall that there was.

Q. You call that a mistake, do you?

A. Yes, sir. [2163—1833]

Q. Well, now, which is right—the way you testify this morning or the way you testified day before yesterday on direct examination?

A. The way I have testified this morning.

Q. You say the way you have testified this morning is correct? A. Yes, sir.

Q. Mr. Robnett, when did you have another conversation regarding this matter? When did you hear another conversation?

A. Hear one or have one?

Q. When did you hear one?

A. In regards to them taking up timber?

Q. Yes, in regard to these timber matters.

A. Why—

Q. Go ahead.

(Testimony of C. W. Robnett.)

A. In regards to the Sam Hutchings claim.

Q. All right. When was that?

A. That was along in the evening; Mr. Kester came into Mr. Kettenbach's private office and stated that he had seen Sam Hutchings, on the street, and he thought that he would take up a timber claim.

Q. Well, what else was said about it?

A. Mr. Kettenbach stated that it was all right, if Sam wanted to take up a timber claim and Bill Dwyer had one to locate him on, it was all right, and wanted to know the amount they would have to pay, and George Kester stated that he thought \$100.00 or \$150.00, and that he would see him again.

Q. Anything else said?

A. No, I don't know as I recall anything at that particular time.

Q. Where did that conversation take place?

A. In the private office of Mr. Kettenbach.

Q. Where was you?

A. I was in the bank room. [2164—1834]

Q. Whereabouts?

A. I think I was sitting down at the flat desk.

Q. What was you doing?

A. Doing some work there, perhaps on the remittances.

Q. What time of the day was it?

A. In the evening.

Q. What time in the evening?

A. Oh, somewheres between four and five o'clock, I presume.

Q. Who was in the bank?

(Testimony of C. W. Robnett.)

A. Perhaps Mr. Bradbury.

Q. Who else? A. I don't know as anybody else.

Q. What was the clerical force at that time?

A. I don't know as there was any other clerical force.

Q. Where was Mr. Bradbury?

A. I presume he was counting his cash, making up the cash.

Q. Was you at your desk?

A. At the flat topped desk; that is my recollection.

Q. What did you say you was doing?

A. Working on the remittances or collections.

Q. And this conversation occurred in Will Kettenbach's private office? A. Yes, sir.

Q. How far was that from your desk?

A. Perhaps four to six feet, six feet.

Q. What day in the month was it?

A. I don't recall.

Q. What year was it? A. I think 1902.

Q. Now, what was the next conversation that you overheard?

A. A conversation relative to—I overheard a conversation [2165—1835] relative to Johnny Roos.

Q. What was that?

A. Mr. Kester told Mr. Kettenbach that he had seen Mr. Roos on the street, and had spoken to him about taking up a timber claim and had offered him, I think, \$150.00, and Mr. Roos was to let him know.

Q. Now, just give the language of Mr. Kester that he used, as near as you can.

A. Mr. Kester went into Mr. Kettenbach's private

(Testimony of C. W. Robnett.)

office and stated that he had seen Mr. Roos, Johnny Roos, on the street and had spoken to him, and "I spoke to him about taking up a timber claim." Mr. Kettenbach asked him what Mr. Roos had said, and he said, "He wanted to know how much there was in it for him, and I told him there would be \$150.00, and he said that he would let me know."

Q. How long was that after he said he had had a conversation with Sam Hutchings?

A. Why, it might have been both was taking place in the same conversation.

Q. What was said in regard to Sam Hutchings?

A. The same as I stated before.

Q. Now, you stated that that was another conversation, Mr. Robnett. Now, which is right?

A. I think they were both in one conversation.

Q. Now, how much did he say that he was to give them or offered them?

A. A hundred and fifty a claim apiece.

Q. A hundred and fifty dollars apiece?

A. Yes, sir.

Q. That is the exact conversation that you overheard?

A. As I recall it at the present time, yes, sir.

Q. Do you remember testifying on day before yesterday, in [2166—1836] response to Mr. Gordon's question:

"Q. Do you remember ever hearing a conversation between Mr. Kester and Mr. Kettenbach relative to those gentlemen taking up claims? A. Yes, sir.

"Q. Well, state what it was and where it was.

(Testimony of C. W. Robnett.)

“A. It was in Mr. Kettenbach’s private office.

“Q. Well, who did the talking?

“A. Why, Mr. Kester came in and says, ‘Will, I have seen Johnny Roos and Sam Hutchings out on the street, and I have been talking to them about taking up timber claims, and I believe they will go up into the timber and file, and will deed over their claims for a couple of hundred dollars apiece.’ ”

Do you remember testifying to that on direct examination? A. Yes, sir.

Q. Which is true—the way you are testifying now or the way you testified then?

A. It was either \$150.00 or \$200.00.

Q. You are qualifying it to one way or another?

A. The amount—sometimes they offered \$150.00 and sometimes \$200.00; my recollection is to-day that it was \$150.00.

Q. And if they didn’t say what you have said they said, they said something else; is that right?

Mr. GORDON.—That is argument; I object to that.

A. Nothing except the difference in the amount; I think it was \$150.00.

Q. Don’t you know, Mr. Robnett, that the evidence you gave on direct examination and the evidence you give now in regard to that particular transaction is nothing near alike?

A. I don’t know; one may not contain all that the other contains. [2167—1837]

Q. Don’t you know that Mr. Kester never—you stated in your direct examination that Mr. Kester

(Testimony of C. W. Robnett.)

stated that he thought they would go up and take timber claims and file and deed them over for a couple of hundred dollars apiece, and that you never testified to anything Roos and Hutchings said, in your direct examination, and you are testifying now to things that Roos and Hutchings said to him?

A. Well, he did say that.

Q. Which is true—the evidence you gave yesterday, or the evidence you are giving to-day?

A. Both of them are true.

Q. Both of them are true? A. Yes, sir.

Q. How do you reconcile your two conflicting statements? A. Where do they conflict in?

Q. They conflict in the amount and the arrangement; you know that.

A. I said the amount—my recollection to-day is \$150.00, and I think that is correct.

Q. And your recollection, when you testified for Mr. Gordon, was \$200.00?

A. Yes, sir; and the other—

Q. Now, did you overhear another conversation with them, between them?

A. In regards to the Lambdin claim.

Q. Well, when was that?

A. That was about the same time—a little later than the one in regards to, or about the same time of the conversation relative to Hutchings and Roos.

Q. Was it the same day? A. No, sir.

Q. How long afterwards?

A. It may have been a few days before or it may have been a [2168—1838] few days afterwards.

(Testimony of C. W. Robnett.)

Q. Where did that conversation take place?

A. That conversation took place in the private office of Mr. Kettenbach.

Q. What was the first thing you heard in regard to the Lambdin claim? A. Between those two men?

Q. Yes. Or the first conversation you heard in regard to the Lambdin claim.

A. Mr. Kester went into Mr. Kettenbach's office and says, "Will, I have been talking with Rowland Lambdin about taking up a timber claim," and Mr. Kettenbach asked him if he was a—if this Lambdin was a brother of Billy Lambdin at the First National Bank, and George said he was.

Q. Go ahead.

A. And he wanted to know,—Mr. Kettenbach says, "George, how much have you got to give him for his right?" And George says, "I made arrangements with him, or told him that I would give him \$100.00," and Mr. Kettenbach wanted to know if that was all right with him, and he says, "Yes, it is, because I know that he will come through all right," and George says, "Yes, I think there is no question but what he will come through all right."

Q. Where did that conversation take place?

A. In the private office of Mr. Kettenbach.

Q. What time of day?

A. Along in the afternoon some time.

Q. Can you think of anything else that was said in that conversation?

A. Why, Mr. Kettenbach asked Mr. Kester if Mr. Dwyer had a claim all ready for him, and he said he

(Testimony of C. W. Robnett.)

thought he had, and that he would [2169—1839] see Mr. Dwyer about it, and then let Mr. Lambdin know when he was to go up into the timber.

Q. What else was said in that conversation?

A. Mr. Kettenbach stated that if—he says, “Well, George, if you think everything is all right, go ahead and see Mr. Dwyer, and if he has got a claim for him, let him go up into the timber and carry out the deal.”

Q. What else was said?

A. He says, “I am going to see Dwyer this evening or in the morning, and then I am to let Lambdin know just when he is to go up into the timber.”

Q. What else was said?

A. I don't know as there was anything further said at that time.

Q. That is the very first conversation you heard, the very first thing you heard relative to Lambdin taking up a claim; that is the very first thing you heard relative to the Lambdin claim, is it not?

A. Yes, that is my recollection at the present time.

Q. Who else was in the bank at that time?

A. I don't know as there was any others than Mr. Bradbury and Mr. Kettenbach and Mr. Kester and myself.

Q. Did you have any other clerical force there at that time?

A. I don't recall at the present time whether there was or not.

Q. Whereabouts was you in the bank at that time?

A. Why, I think I was sitting at the flat-topped

(Testimony of C. W. Robnett.)

desk there, by Mr. Kester's desk.

Q. Where was Kester and Kettenbach?

A. In Mr. Kettenbach's private office.

Q. What was you doing at that flat-topped desk?

A. I was doing some work that took place at that desk.

Q. Was it during banking hours, or after banking hours?

A. I think it was after the close of the bank.
[2170—1840]

Q. That is all that you can think of that occurred in that conversation, is it?

A. Yes, I believe that is all that I can recall.

Q. Now, Mr. Robnett, I would like for you to go right on and repeat that conversation, without me having to ask you questions about what else was said, and so forth; I would like for you to go right on and repeat the conversation you heard there at that time relative to this Lambdin claim.

Mr. GORDON.—I object to that, on the ground that he has already repeated it twice, and it is not proper cross-examination.

A. Mr. Kester went into Mr. Kettenbach's private office and says, "Will., I have seen Mr. Rowland B. Lambdin down—

Q. Down where?

A. —Rowland B. Lambdin on the street, and spoke to him about taking up a timber claim," and Mr. Kettenbach asked him if was a brother of Billy Lambdin of the First National Bank, and Mr. Kester said he was. Now, he says, "What are we to

(Testimony of C. W. Robnett.)

give him for his right?" And Mr. Kester said, "I offered him \$100.00." And Mr. Kettenbach asked if that was all right, and Mr. Kester said it was, it was perfectly satisfactory. Also Mr. Kettenbach asked Mr. Kester if they had a claim for him, or Bill Dwyer had a claim to locate him on at that time, and Mr. Kester said, "I think he has, but I will see him either this evening or to-morrow morning, and then I am to let Mr. Lambdin know when he is to go up into the timber."

Q. Now, what else was said?

A. Mr. Kettenbach told Mr. Kester to go ahead with it if everything was all right, if Mr. Dwyer had the claim, that he was perfectly satisfied to go through with the deal.

Q. Anything else, now?

A. No, I don't recall anything. [2171—1841]

Q. Didn't you testify on your direct examination that the first information you had regarding the Lambdin claim, and the first conversation you overheard, was when Lambdin came in and had a conversation with Kester at the window, either at the cashier's window or at the assistant cashier's window?

A. I don't know; I may have; I don't recall.

Q. Well, now, which is true? In response to Mr. Gordon's question:

"Q. Now, state what it was.

"A. This is between the entryman and one of the defendants?

"Yes.

(Testimony of C. W. Robnett.)

“A. Well, Mr. Lambdin came into the bank and had a talk with Mr. Kester at the window, either at the cashier’s window or the assistant cashier’s window,” and so forth.

Do you remember so testifying? A. I may have.

Q. How do you reconcile that statement with the statement you now make, that the first information you had about it, or the first conversation you overheard was when Kester came into Kettenbach’s private office and had a talk with him?

Mr. GORDON.—I object to that, on the ground that that isn’t putting the question as it appears in the record. The question I asked was what was the conversation he heard between the defendants and Lambdin.

Mr. TANNAHILL.—I have asked him the same question. The first conversation that he heard relative to this Lambdin claim, either with the defendants or anyone else.

WITNESS.—That conversation took place after this conversation in the private office. That is what I was trying to get through my head, that there was some mistake there.

Q. You testified further on to a conversation that took place when Mr. Lambdin came into the private office, after this conversation, [2172—1842] but this conversation you testified took place before this conversation between Mr. Kester and Mr. Kettenbach.

Mr. GORDON.—The record doesn’t show that.

WITNESS.—I don’t think so, Mr. Tannahill.

(Testimony of C. W. Robnett.)

That was a conversation in regards to the first conversation I heard between them, but I didn't state that it was the first conversation between the defendants in regards to that particular claim.

Mr. TANNAHILL.—Q. Then, you say now that this conversation that you overheard between Kester and Lambdin at the cashier's window or the assistant cashier's window was after the conversation you overheard between Will. and George in Kettenbach's private office; is that right?

A. The conversation that was at the window was after Mr. Kettenbach had taken the matter up with Mr. Kester.

Q. What was that conversation?

A. At the window?

Q. Yes.

A. It was relative to going up into the timber and seeing the claim, and that Mr. Dwyer had a claim all ready for him, and that he could go; he wanted to know—Mr. Kester asked Mr. Lambdin when he could go, and Mr. Lambdin said, "I can go any time you are ready," and he says, "Mr. Dwyer has got the claim ready, and you can go at a certain time."

Q. Now, that was the conversation that you testified to in your direct examination as occurring after this conversation with George and Will., between George and Will. Do you know anything that happened next, relative to that transaction?

A. Why, Mr. Lambdin came into the office and first talked to George, and wanted to know where he could meet Mr. Dwyer, and George told him he would make

(Testimony of C. W. Robnett.)

arrangements and let him know. [2173—1843]

Q. That is the conversation you related as having taken place afterwards?

A. That was when he came in and asked about it.

Q. Then, you never heard any conversation between George and Lambdin that occurred before this conversation you say took place between Kester and Kettenbach in his office?

A. No, I don't know as I did; I don't recall it at the present time.

Q. Then, you was mistaken when you testified on your direct examination that they did—

Mr. GORDON.—I object to that. That doesn't appear on the record. If he wants to impeach the witness let him read the record as it is.

Mr. TANNAHILL.—Q. You never saw Kester and Lambdin talking at the window before that, did you, before you heard the conversation between Kester and Kettenbach?

A. I don't recall at the present time that I did, and yet I wouldn't say positively that I hadn't but I know they were talking at the window after this conversation in regards to when he should go up into the timber, and also whether or not, if he wanted to draw some money on that \$100.00, if it would be all right, and Mr. Kester says, "I think we can arrange that after you go up and make your filing and come in and need some money before final proof, I think we can arrange to let you have a little."

Q. Where was you at the time that conversation took place?

(Testimony of C. W. Robnett.)

A. I was in the main body of the bank. [2174—1844]

Q. Now, you remember of testifying in regard to this Lambdin claim at Boise, do you not?

A. Yes, sir.

Q. And don't you remember that you never testified to anything about Lambdin drawing any money from Kester on this claim; that you never testified to that conversation at all at Boise?

A. Why, I might not have testified to it; but the facts are that he did.

Q. You thought of that since that time, have you?

A. Why, perhaps I have. I perhaps didn't think of it at that time; but it is part of the conversation that took place there.

Q. Did you read Lambdin's statement over?

A. No, sir. I have never read Lambdin's statement.

Q. Did you hear it read over? A. No, sir.

Q. Did you hear the Lambdin claim discussed?

A. No, sir, not as to what he was going to say.

Q. Now, then, what was that conversation between Kester and him relative to his drawing some expenses—some **money at different times**?

A. Why, he came in there and says, "Mr. Kester, can I draw—in case I need to draw a little bit of money before final proof is made, can I get a hundred dollars? Will it be so that I can do so?" And Mr. Kester told him he thought there would be no trouble at all in allowing him to draw some money after he had made his filing.

(Testimony of C. W. Robnett.)

Q. Was anything else said?

A. Relative to the drawing of the money?

Q. Yes?

A. Mr. Lambdin said that was all right with him; that he would come in in case he needed any. He was in, though, several different times to see Mr. Kester in regards to the money before the final proof. I think he got money; he got money twice, and I don't know but what three times. [2175—1845]

Q. And do you remember anything else that was said about it?

A. I know he came in there and asked Mr. Kester for money at one time when he wanted to send his wife to Spokane for an operation.

Q. What was said in that conversation?

A. He came in and told Mr. Kester that his wife was sick and he had to send her to Spokane and he didn't have the money, and he wanted Mr. Kester to advance him some money, and Mr. Kester told him he would, and he had him give a note, and he also requested that his brother (Billy Lambdin) go on the note.

Q. What else was said?

A. I don't recall at the present time.

Q. Who was present at that conversation?

A. Why, I think just Mr. Kettenbach—I mean Mr. Kester and Mr. Lambdin.

Q. Where did that take place?

A. That took place in the private office of Mr. Kettenbach's.

Q. That is another conversation you didn't testify

(Testimony of C. W. Robnett.)

to on your direct examination, is it not?

A. I don't recall that I testified to it.

Q. And it is another conversation that you didn't testify to in Boise, is it not?

A. Yes, sir; I don't recollect of testifying to it.

Q. You have thought of that since?

A. Yes, sir.

Q. Now, when was the next conversation you overheard between Kester and Kettenbach relative to these timber matters?

A. The next one then, or just any of the conversations?

Q. Well, any of them—any other conversation that you overheard?

A. Well, there was the conversations relative to these Pierce claims.

Q. The Pierce claims? Well, was there a conversation relative [2176—1846] to a Shaeffer claim?

A. Yes, sir, there was a conversation relative to a Shaeffer claim.

Q. Where did that take place?

A. The first conversation was between Kester and myself, and Mr. Kester came to the bank along in the forenoon and asked me where he could find Shaeffer, and I told him that I thought he was in the directors' room. "Well," he says, "I want to see him relative to going up into the timber and taking up a timber claim," and I told him he could find him down in the furnace-room, I thought, as there is where he had gone the last I had seen of him.

(Testimony of C. W. Robnett.)

Q. Well, what else was said?

A. Well, Mr. Kester said, "I will go down there and see if I can find him."

Q. And what else was said?

A. Along that evening—that was all at that time—that evening, why Mr. Kester came into the bank and told me that he had seen Mr. Shaeffer, and that he was going up into the timber to take up a timber claim with Mr. Dwyer, and that he would like for me to see that the work—the janitor work—was attended to while he was away.

Q. Now, you say Kester told you that he wanted to see Shaeffer and wanted to get him to go up into the timber and take up a timber claim?

A. Yes, sir.

Q. That is the first conversation, is it?

A. Yes, sir.

Q. Now, that is not what you testified to on direct examination, is it?

A. I don't know. I may not have testified to all of that.

Q. And you testified at Boise that Kester's conversation was—

Mr. GORDON.—What page are you reading from?

Mr. TANNAHILL.—I am reading from page 369.

Q. (Reading:) "State with whom this conversation was, and where. A. Why, sometime in the forenoon George came to me and wanted to [2177—1847] know where he could find Shaeffer. I told him he was down in the furnace-room. He

(Testimony of C. W. Robnett.)

says, 'I will go down there.'

"Q. This man you refer to as 'George,' is that the defendant Kester?

"A. Yes, sir; and along in the afternoon George came to me, and he says, 'Clarence, I am going to send Fred. up to take a timber claim for me, and I want you to see that the janitor work is taken care of while he is away, and either look after it or get somebody to see to it.' "

And on direct examination you testified—in this hearing you testified as follows:

"Q. Did you ever hear any conversation between him and any of the defendants relative to his taking up a timber claim? A. Yes, sir.

"Q. Now, state when that was, as near as you can, and what it was.

"A. It was a few days before his trip into the timber to take up his claim, to see his claim before filing.

"Q. Where was this conversation?

"A. In the working-room, main body of the Lewiston National Bank.

"Q. Do you remember about the time of day that it was?

"A. It was along in the evening, after the bank had closed.

"Q. Who were the parties to this conversation?

"A. Mr. Kester and Mr. Shaeffer.

"Q. Now, tell what was said.

"A. George and I were in the bank there together; I was working on the books, and Mr. Shaeffer came

(Testimony of C. W. Robnett.)

in to do the janitor work, and George says, 'Fred., I have spoken to Clarence about looking after your work when you go up to see your claim, so that it will be tended to, and so as soon as Mr. Dwyer is ready to go up, why I will let you know, and you can go up and see the claim, if the price that I spoke of, of \$100.00, for your right is satisfactory to you,' and Fred., says, 'Yes.' "

A. Well, I wasn't repeating the conversation that took place there [2178—1848] between Mr. Shaeffer and Mr. Kester; I was stating the conversation that I referred to in that direct conversation when he stated to Fred. that he had spoken to me about my looking after Mr. Shaeffer's janitor work while he was gone up there. I hadn't gotten down to telling the conversation between Shaeffer and Kester, and they—

Q. And that is the way you reconcile the discrepancy between your evidence in Boise and your evidence on direct examination and the evidence you are giving now, is it?

A. Well, there is no conflict there.

Q. And your version is that there is no conflict?

A. No, sir, I don't see where the conflict comes in.

Q. Now, where was you when this conversation took place? A. I was at the bookkeeper's desk.

Q. And where was Kester?

A. He was standing there about the Assistant Cashier's window.

Q. Now, you have stated all the conversation that

(Testimony of C. W. Robnett.)

you can remember between Kester and Shaeffer, have you?

A. Including what you have read there.

Q. But I mean you have testified now on cross-examination and repeated all the conversation that you can remember that took place between you and Kester, have you?

A. No, I don't recall now just all I have testified to; but you started in on the other conversation.

Q. Now, go ahead and tell anything else that occurred in that conversation between you and Kester and Shaeffer.

A. If the Reporter will read what I stated there I will take it up from that point.

Q. Well, I don't care to take up the time of going back over it.

A. Well, the conversation—I will start in at the first conversation, then.

Q. All right, start in at the first conversation.

A. Why, along in the afternoon Mr. Kester came into the bank, and [2179—1849] he says, "I have seen Fred. about taking up a timber claim, and I am going to send him up to the timber with Bill Dwyer."

Q. Now, that is the first conversation between you and Kester, was it?

A. No, that is the second conversation, the conversation, the conversation after I told him where Shaeffer was.

Q. Oh, yes. Well, go ahead.

A. And he stated that he wanted me to look after the janitor work or see that it was attended to while

(Testimony of C. W. Robnett.)

Mr. Shaeffer was away, and I asked him when Fred. was going, and he said the next day or two, as soon as Mr. Dwyer could take him up to the timber.

Q. Well, now, what else was said?

A. And pretty soon Mr. Shaeffer came in, and Mr. Kester told him that—he says, “Fred., I have spoken to Clarence about looking after your work while you are away, and as soon as Mr. Dwyer can go with you up to the timber to show you your claim I want you to go, provided that the offer I made you of \$100.00 for your right is satisfactory to you—is all right. Is that price all right?” And Mr. Shaef-fer said that it was.

Q. Well, now, what else was said?

A. And Mr. Kester asked him if he had the money to pay his expenses up there to the claim, and he said that he thought he had. “Well,” Mr. Kester said, “if you haven’t got enough money Mr. Dwyer will pay your expenses.”

Q. Now, was there any other conversation between Kester and Shaeffer that you overheard?

A. Also in that conversation he said that when he came back that Mr. Dwyer would look after his filing papers and see that the filing was made all right.

Q. And did Mr. Dwyer look after his filing papers?

A. Why, I don’t know whether he did or not; I would not be positive of that. [2180—1850]

Q. Was you there when Shaeffer came back?

A. I don’t recall that I was.

Q. And do you know who made out his filing papers? A. I do not.

(Testimony of C. W. Robnett.)

Q. And did you hear any conversation between Kester and Shaeffer after Shaeffer got back?

A. Why, yes. Mr. Kester asked Mr. Shaeffer if he had seen the claim, and he said that he had; and he asked him if he had filed, and he also said that he had filed; and, "Well," he says, "when it comes time to make final proof, why Mr. Dwyer will let you know, and I will see that you get the money, and you can go ahead then and make the filing—or, the proof."

Q. Now, what else was said?

A. Well, Shaeffer says, "All right."

Q. Was anything else said?

A. He asked him how about the—Mr. Shaeffer asked him about the questions that he was to answer, and George says, "Fred., when the time comes why either Mr. Dwyer or myself will tell you how to answer those questions."

Q. Now, you didn't testify to this last conversation at Boise, did you?

A. I don't know as I did, no, sir.

Q. You didn't testify to it on direct examination, either, did you? A. I don't know as I did.

Q. You have thought of that since?

A. Yes, sir.

Q. Well, now, was there any other conversation that you heard? Well, that's all you can think of that was said between Dwyer, Shaeffer and Kester, or either of them, is it?

A. Well, there was one conversation that took place between Mr. Kester and myself in regards to

(Testimony of C. W. Robnett.)

the Shaeffer claim. [2181—1851]

Q. When was that?

A. That was while Mr. Shaeffer was up in the timber with Mr. Dwyer.

Q. What was that?

A. I asked George what kind of a claim Mr. Shaeffer was getting, and he said it was a good claim, worth about \$3,000.00, and I asked him, I says, "What are you going to give him for his right?" and he says, "\$100.00." He says, "That will help him pay for his lot out there, and it looked pretty good to Fred."

Q. And where did that conversation take place?

A. In the Lewiston National Bank room.

Q. Whereabouts in the bank?

A. Why, I don't know; some place there in the working-room.

Q. And where was you? A. I was there.

Q. What was you doing?

A. I don't know as I was doing anything at that time. I was talking to Mr. Kester.

Q. What time of day was it?

A. Why, I couldn't state just what time of day it was.

Q. Now, was it during banking hours?

A. I wouldn't be positive of that.

Q. Now, can you tell of anything else that was said in regard to this Shaeffer claim?

A. Nothing more than except that at the time when it was sold, when they made up the list of claims that they sold, including that claim, they

(Testimony of C. W. Robnett.)

spoke about selling the Shaeffer claim.

Q. What was said about that?

A. Something was stated about that it helped to bring up—holding up the price of the other claims that were being put in—some of the other claims being put in on the deal.

Q. Anything else?

A. No, I don't recall anything at the present time.

[2182—1852]

Q. Now, you testified to overhearing a conversation regarding the Cornell claim. What was the first conversation you overheard regarding that?

A. That was in Mr. Kettenbach's private office.

Q. Who was present?

A. Mr. Kettenbach and Mr. Kester.

Q. Who else?

A. No one else in the office there.

Q. Was there anyone else in the bank?

A. There was myself, and I presume Mr. Bradbury.

Q. Any other clerical force in the bank?

A. I don't know as there was.

Q. What time of day was it?

A. Along in the afternoon or evening.

Q. Was it during banking hours or after banking hours?

A. I think it was just after the closing of the banking hours.

Q. Now, what was said?

A. Mr. Kester came into Mr. Kettenbach's private office, and said, "Will, I have seen an old friend

(Testimony of C. W. Robnett.)

of mine, a schoolmate that went to Bishop Scott's Academy with me in Portland, and he seems to be up against it, and I asked him if he didn't want to take a timber claim, and he said he didn't know but what he did, and I offered him \$100.00 for his right and told him that I would let him know when he could be taken up into the timber."

Q. What else was said?

A. And Mr. Kettenbach wanted to know if he was all right, and Mr. Kester said he was; that he would carry out the agreement; and that \$100.00 at that time looked quite large to him.

Q. Anything else?

A. Why, he says, "Have you got a claim for him?" and Mr. Kester said, "Yes, I think we have. I will see Mr. Dwyer, and I think perhaps we can put him on Mr. Dwyer's homestead." [2183—1853]

Q. Anything else?

A. "Well," he says, "you go ahead and see Mr. Dwyer and find out about it, and if you think everything is all right, why, go ahead; I am perfectly satisfied."

Q. Now, Mr. Robnett, in your examination in your evidence at Boise, either in direct or cross-examination, you failed to state anything about hearing a conversation relative to them putting Cornell on Dwyer's homestead, did you not?

A. I don't know as I mentioned it.

Q. And you didn't mention it in your direct examination yesterday? A. I don't know that I did.

Q. You have thought of that since, have you?

(Testimony of C. W. Robnett.)

A. Yes, sir.

Q. Well, now, did you hear any other conversation regarding the Shaeffer claim?

A. The Shaeffer claim? This is the Cornell claim.

Q. Or the Cornell claim, I mean?

A. Yes; there was several conversations that took place.

Q. Well, mention another conversation.

A. Another conversation took place after the filing had been made.

Q. Well, what was that?

A. Mr. Cornell came into the bank and spoke to Mr. Kester over at the bookkeeper's window in regards to something relative to the claim, and he seemed to be not satisfied—Mr. Cornell didn't seem to be satisfied in regards to what he was getting out of the claim. So after Mr. Cornell went out I asked Mr. Kester, I says, "George, what is the matter with him? Isn't he satisfied? Isn't he going to come through according to the arrangements?" And he says, "No, he don't seem to be perfectly satisfied; he has got a little money now, and he don't want to come through and give the deed as he should." This was after the final proof. [2184—1854]

Q. Now, was that before or after he made final proof? A. This was right after the final proof.

Q. Now, can you think of any other conversation?

A. Yes; there was one time after the filing Mr. Cornell came into the bank there and borrowed some money from Mr. Kester at the cashier's window.

(Testimony of C. W. Robnett.)

Q. Anything else? A. No, I don't—

Q. Now, can you mention anyone else that was in the bank at the time, other than you and Kester and Kettenbach and Cornell and Bradbury, or was Bradbury in there?

| A. Well, at the time of this conversation at the bookkeeper's window between Mr. Kester and Mr. Cornell, there wasn't anybody else in the bank except the three of us: Mr. Kester—

Q. Where was you?

A. I was at the cashier's window.

Q. At the cashier's window, and this conversation took place at the bookkeeper's window?

A. Yes, sir.

Q. Well, what else? Was there anyone else in there?

A. Another conversation that took place between Mr. Kester and myself relative to the Cornell claim was after Mr. Kester had been talking with Mr. Cornell outside of the bank, in front of the bookkeeper's window, at the iron railing, and he came in and I asked Mr. Kester if that was his friend from Portland that he had located on a timber claim, and he said that it was.

Q. Was anything else said in the conversation?

A. And he said, "I am going to give him a hundred dollars. When I knew him in Portland he was pretty well to do, but his folks have met with reverses and he is now kind of hard up against it, and a hundred dollars looks pretty good to him.

Q. Now, you didn't testify to that on your direct

(Testimony of C. W. Robnett.)

examination, [2185—1855] did you?

A. I don't know as I did.

Q. And you didn't testify to it in Boise, either, did you, on direct examination or cross-examination, did you? A. I don't know as I did.

Q. You have thought of that since?

A. Yes, sir.

Q. Now, can you think of anything else you heard in relation to that claim?

A. I think in Boise I must have testified to a portion of that conversation.

Q. Well, can you think of anything else you heard?

A. Not at the present time I don't recall anything.

Q. Is that the claim that you say you heard a conversation about Dwyer having covered up with a homestead filing and had no right and couldn't prove up on it? A. The Dwyer homestead?

Q. Yes. A. Yes.

Q. Well, now, you know that Dwyer did have a right, don't you?

A. Why, I don't know whether Dwyer had a homestead right or not; that was the report.

Q. Who did you hear say that?

A. I heard that report in regards to that; that it was understood that he didn't have any homestead right.

Q. Well, you didn't hear the defendants say anything about that, did you?

A. No, I don't know as I heard them state that he didn't; but they stated that he was holding down

(Testimony of C. W. Robnett.)

that homestead up there, and that there was some talk of it being jumped by a timber and stone entry—contested.

Q. But you never heard the defendants say anything about his having no right? [2186—1856]

A. I don't know as they said it or who said he didn't have any right.

Mr. TANNAHILL.—I move to strike out all the evidence of the witness relative to any hearing or impression or conversation that Mr. Dwyer had no homestead right.

Mr. GORDON.—Well, you asked for it.

Mr. TANNAHILL.—No, you asked that. That was testified to on direct examination.

Q. Now, you say that you heard some conversation between the defendants relative to some contests. What was the first you heard regarding that?

A. It was in Mr. Kettenbach's private office.

Q. When was that?

A. That was just before those townships came into—was thrown open for filing, that were subject to filing on April 25th.

Q. What year? A. 1904.

Q. Now, what was said—or, who was present at that time?

A. Why, Mr. Kettenbach, Mr. Kester and Mr. Dwyer.

Q. What was said? Was Mr. Bradbury there?

A. Mr. Bradbury very likely was in the bank, yes, sir. It was during banking hours, according to my recollection.

(Testimony of C. W. Robnett.)

Q. What time of day was it?

A. Why, I think that conversation took place in the forenoon. That is my recollection.

Q. In the forenoon? A. Yes, sir.

Q. Now, what was said? Were they all in Mr. Kettenbach's private office?

A. That is, Mr. Kester, Mr. Kettenbach and Mr. Dwyer was.

Q. And where was you?

A. I was sitting at the flat-top desk. [2187—1857]

Q. And what was you doing?

A. I was working on the books—the collections—maybe on the collections, at that time of the day, or the mail, one or the other.

Q. Now, what was said?

A. Mr. Dwyer stated that he was going to contest a number of those homestead entries up there in the timber, and Mr. Kettenbach wanted to know if there was anything to prevent a person from contesting more than one entry, and Mr. Dwyer said no, that he could contest as many as he wanted to, as nobody knew just what he was going to do, whether he was going to locate people on the timber, or whether he was going to file scrip on it, and there was nothing in the law prohibiting a man from filing as many contests as he wanted to file.

Q. Well, what else?

A. Mr. Kettenbach stated then for him to go ahead, and he hoped he would file as many contests as he wanted to, and for him to file them, and as long

(Testimony of C. W. Robnett.)

as they had entrymen to place on the claims to go ahead and enter contests, and then locate them under the timber and stone act.

Q. Well, what else?

A. Why, there was something said there about filing a number of contests, but I don't recall now just what it was.

Q. Didn't Dwyer say that these were not good-faith homesteads; that they were not settlers in good faith, but had only filed those homesteads for the purpose of defeating the State's rights?

A. He said that a number of the people up there were—would relinquish after the State had made their selections on those homesteads; they just had cabins up there, and they would relinquish and file timber and stone claims, and he was going to beat them to it and contest them before they had a chance to relinquish and offer their timber and stone filings.

Q. Didn't he say that he had cruised out all that timber himself?

A. Well, I don't know as he said he had cruised out all that [2188—1858] timber himself; he said he knew a great many of those claims up there, and had been over them, and knew what they were.

Q. And didn't he say that Fitzgerald and G. W. Thompson had put those homesteaders on there?

A. I don't recall that.

Q. What was it you said in your direct examination that Dwyer said about Fitzgerald having some homesteaders there?

A. I don't recall at the present time that I spoke of Fitzgerald.

(Testimony of C. W. Robnett.)

Q. Wasn't Fitzgerald's name mentioned in this conversation?

A. I don't recall it at the present time; no, sir.

Q. You don't remember about that? A. No, sir.

Q. Now, was there anything else said about it?

A. About the contests?

Q. Yes. A. At another conversation there was.

Q. Well, what was it?

A. Why, it was between Mr. Kettenbach, Mr. Dwyer and myself.

Q. What was that?

A. That was during the noon-hour, and I was at the window, and Mr. Kettenbach and I were talking and Mr. Dwyer came in, and Mr. Kettenbach says, "Well, Bill, what have you been doing to-day?" He says, "I have been over filing contests." He says, "How many did you file?" He either stated 14 or 18, I don't recall which—I think it was 14—and I made the statement, I says, "Bill, are you going to take all those homesteaders' timber away from them?" And he says, "Yes, I am going to do the whole thing, if I have to file 40 contests or more."

Q. Was anything else said?

A. He says, "They are not entitled to that timber," and he says, "I am going to have it."

Q. Now, where did you say you was when this conversation took place? [2189—1859]

A. At the cashier's window.

Q. At the cashier's window? A. Yes, sir.

Q. What was you doing?

A. I was waiting on the window; that is, I was

(Testimony of C. W. Robnett.)

there to wait on the window when anybody came in.

Q. And who else was there?

A. Mr. Kettenbach.

Q. And anyone else? A. No, sir.

Q. Was Mr. Bradbury there?

A. No, sir. Mr. Bradbury was at dinner.

Q. Well, now, you testified something regarding a conversation with Jack. O'Keefe—between Kester and Jack. O'Keefe. When did that take place?

At this time a recess was taken until two o'clock P. M., before the witness had answered the last question. [2190—1860]

At two o'clock P. M., the hearing was resumed.

CLARENCE W. ROBNETT, a witness heretofore called by the complainant, and duly sworn, resumed the witness-stand for further cross-examination, and testified as follows, to wit:

Cross-examination (Continued).

(By Mr. TANNAHILL.)

Q. Now, Mr. Robnett, just before we adjourned for the noon hour I was asking you concerning some conversation that you say you heard between George Kester and Jackson O'Keefe, relative to some entries that was made by O'Keefe, the Taylor brothers, Dammarell, and Prentice, and others. Now, I wish you would state the first thing that you heard or knew, whether it was between Kester and Kettenbach or anyone else, relative to these entries.

A. The first conversation—my first knowledge was a conversation overheard between Mr. O'Keefe and

(Testimony of C. W. Robnett.)

Mr. Kettenbach and Mr. Kester.

Q. When was that conversation?

A. It was in the afternoon, towards evening, directly after the bank had closed.

Q. What year was it?

A. Along in the fall of 1902 or the spring of 1903.

Q. And do you remember what day it was?

A. The day of the week?

Q. Yes. A. No, sir. [2191—1861]

Q. And where did that conversation take place?

A. In the Lewiston National Bank.

Q. What part of the bank?

A. The main body—close to the door that leads into the directors' room.

Q. Who was present?

A. Why, Mr. O'Keefe, Mr. Kester, Mr. Kettenbach and myself.

Q. Anyone else? A. Perhaps Mr. Bradbury.

Q. Where were you sitting or standing?

A. At the bookkeeper's desk.

Q. What was you doing?

A. I was working on the depositors' ledger.

Q. Do you remember what particular work you was doing on the depositors' ledger?

A. No, I don't know as I can tell just exactly what kind of work.

Q. Now, how did that conversation come up?

A. They had been in the directors' room talking and came out of the directors' room into the main body of the bank.

Q. And what was said?

(Testimony of C. W. Robnett.)

A. Mr. Kester spoke to Mr. O'Keefe and said, "Now, Jack., you will see those people soon when you get back to Asotin?" and he said, "Yes," he says, "I will see them, the two Taylor boys, and I think they will take the claims for \$100.00 or thereabouts, and I think there are several others that can be gotten."

Q. Now, what else was said?

A. Well, George says, "You want to be sure and have the arrangements made with them so that you will know what they will take for their rights, and that everything is arranged, and when they can go and see the claims, and that everything will be arranged so that there will be no hitch."

Q. And what else was said? [2192—1862]

A. And Jack. said, "I will see to that, and see that everything is all right."

Q. Anything else?

A. Mr. Kester asked him if he was sure that they could be depended upon, and he said that they could; that they would do whatever he said in regards to not saying anything about the claims—under what conditions they were taken up.

Q. And what else was said?

A. I don't recall just at the present moment anything further.

Q. And that is everything you can think of that was said? A. Yes; just at the present time.

Q. Now, do you remember of testifying in your direct examination that O'Keefe told Kester he could get them for \$150.00 apiece, and maybe he would have to pay them \$200.00, but anyway you can get them

(Testimony of C. W. Robnett.)

at what is right, and we can depend on them; that you testified that that was the language that was used?

A. I might have. I don't just recall how I worded it.

Q. I will ask you if you testified on direct examination as follows:

“Q. Now, did you hear anything of the arrangements that they had, or were there any?

“A. Yes; they spoke then relative to what about what they would want, and he said, ‘Oh, I think you can get them for perhaps \$150.00 apiece, maybe you may have to pay them \$200.00, but anyway you can get them at what is right, and we can depend on them.’ ”

Did you so testify on your direct examination?

A. Perhaps I did.

Q. Did you not testify at Boise in the criminal trial—

Mr. GORDON.—What page are you reading from?

Mr. TANNAHILL.—Page 393.

Q. —that they could be got for \$100.00 apiece?

A. I don't know. I don't recall just what I testified there. [2193—1863]

Q. Now, did you not testify on your direct examination as follows:

“Q. Now, where was the conversation, and between whom was it?”

That was the question asked you by Mr. Gordon.

“A. Why, Mr. Kester and Mr. Kettenbach and Mr. O'Keefe came out of the directors' room; they was in there having a talk, and they stopped in there while

(Testimony of C. W. Robnett.)

Mr. O'Keefe was waiting for the stage to go to Asotin, and Mr. Kester asked him regarding the securing of certain entrymen to take up claims, and he spoke about certain parties in Asotin that he would get."

Now, then, that is materially different from the conversation you are testifying to now.

A. What testimony is that?

Q. That is the testimony you gave on day before yesterday. Now, which is right, the testimony which you gave day before yesterday or what you are testifying to to-day?

A. Where is the material difference?

Q. Well, which is correct? A. I don't see—

Q. You ought to remember the difference?

A. I don't see—the material facts there are practically the same, unless it be the difference in the price.

Q. That is the only explanation you have to make of it, is it?

A. No. I don't see where there is any difference in the conversation.

Q. Is it not a fact that Mr. Gordon at that time was holding in his hand your evidence given at Boise, and prompting you on that evidence, and reading from it?—

Mr. GORDON.—I object to that—

Mr. TANNAHILL.—Q. —when he asked you those questions? [2194—1864]

A. Why, he had before him some evidence. I didn't read the evidence or the paper that he was prompting from.

(Testimony of C. W. Robnett.)

Q. Well, it was the same paper he has before him now, was it not? A. It might have been, yes.

Q. Now, did you not testify on day before yesterday as follows:

“Q. Do you remember him naming those parties, who they were?

“A. Well, it was two relatives of his.

“Q. Do you remember what their names were?

“A. The Taylors—the two Taylor boys.

“Q. And do you remember anybody else?

“A. David Bingham; and then he thought there would be two others that could be secured.

“Q. Do you remember whether he named them or not?

“A. No, I don't think they were named at that time.

“Q. Now, did you hear anything of the arrangements that they had, or were there any?

“A. Yes; they spoke then relative to what about what they would want, and he said, ‘Oh, I think you can get them for perhaps \$150.00 apiece, maybe you may have to pay them \$200.00, but anyway, you can get them at what is right, and we can depend on them.’ ”

Now, then, that is what you testified to on day before yesterday, on your direct examination, and what you are testifying to now is materially different from what you testified to on your direct examination. You realize that, don't you, Mr. Robnett?

A. Why, I testified to a little bit more day before yesterday, perhaps, than I testified to here now under

(Testimony of C. W. Robnett.)

the cross-examination; but the material facts are practically the same, as I take it.

Q. Well, you testified that he said they would have to pay them \$150.00 apiece. A. \$150.00? [2195—1865]

Q. Yes, that he said they would have to pay them that. You are testifying, now, that he said they would have to pay them \$100.00 apiece, and before you testified \$150.00 or \$200.00 apiece.

A. And in Boise I testified to \$100.00.

Q. And in Boise you testified to \$100.00. Now, which is right?

A. My recollection is now that it was \$150.00.

Q. And on your cross-examination you didn't testify that the language that was used was that "I think you can get them for perhaps \$150.00 apiece, maybe you may have to pay them \$200.00, but anyway you can get them at what is right." A. Yes.

Q. Now, which is correct?

A. That was the wording of Mr. O'Keefe's.

Q. You think now that they were to get \$100.00 apiece, instead of \$150.00 or \$200.00?

A. No; I mean \$150.00 apiece or they might have to pay them \$200.00.

Q. Oh, then you think that's right? A. Yes, sir.

Q. Then, when you testified day before yesterday on direct examination you think that's right—the evidence you gave then was right?

A. Relative to the \$150.00 or \$200.00?

Q. Yes. A. Yes, sir.

Q. And then you testified in Boise that they would

(Testimony of C. W. Robnett.)

have to pay them \$100.00, and when you testified that they would have to pay them \$100.00 that was wrong, was it?

A. Did I testify to that—to \$100.00?

Q. Yes, on cross-examination a few minutes ago.

A. I think \$150.00 or \$200.00 was the wording.

Q. Well, now, what else was said? A. Why,—

[2196—1866]

Q. If you can think of anything in addition to what you have testified to?

A. Mr. Kester says, “Now, Jack., when you see these people next time, if you see them before you come down again, why you let us know just what they say and what we can depend upon in regards to what they will want for their claims, and when they can go and see the timber claims, and all about it,” and Mr. O’Keefe says, “I will, and the next time I come down I think I will be able to tell you everything in regards to just what can be done with these entries.”

Q. Now, that was the second conversation, was it?

A. That was the same conversation, before he went up to Asotin.

Q. The same conversation when he was in the bank? A. Yes, sir.

Q. Well, why didn’t you testify to that on your direct examination?

A. Why, perhaps there are so many little things come up, the more it is brought to my attention the more I recollect what has been stated in these conversations.

Q. Well, now, you have testified to the first conver-

(Testimony of C. W. Robnett.)

sation you heard relative to these O'Keefe matters, have you? A. That is the first conversation.

Q. Now, I am reading from page 393, Mr. Gordon. Did you not testify in Boise relative to the first conversation you heard regarding these O'Keefe matters as follows:

“A. It was between George and Will.

“Q. And where was it?

“A. It was in the bank room.

“Q. And what was said?

“A. George had just returned from Asotin—he had been up to Cloverland—and when he came in he says, ‘I was talking with Jack. O'Keefe, and he has some friends up there, and relatives, that he wants to locate on some timber claims for us and help pay off this indebtedness [2197—1867] which he owes the bank, which I am standing good for, and I told him I thought we could arrange that all right, and he said he would see his parties and find out what we would have to pay the entrymen for their rights.’ Will says, ‘George, we can't afford to pay Jack. very much.’ ‘Well,’ George says, ‘Jack. will be easily pleased; he won't require very much, and I think we can get his entrymen for about \$100.00 apiece.’ ”

Now, isn't that what you testified to in Boise?

A. That is, you mean the first time?

Q. Yes, sir; the first conversation you heard relating to these entries?

A. Yes, that was the first conversation in regards to the entries. This other was the first conversation

(Testimony of C. W. Robnett.)

between Mr. O'Keefe and the defendants, Mr. Kester and Mr. Kettenbach; but this other conversation had taken place before that; and then when Mr. O'Keefe came down they had the conversation in the directors' room, and this was the first conversation that took place between Mr. O'Keefe and Mr. Kester and Mr. Kettenbach, and the other was a conversation prior to that time which had taken place between Mr. Kettenbach and Mr. Kester.

Q. Now, didn't you also testify as follows:

"Q. Was anything further said about these people that Mr. O'Keefe had spoken about?

"A. Why, he said, George told Will that Jack would be down in a few days and was coming to the bank, and they would talk it over."

You testified to that, didn't you? A. Yes, sir.

"Q. Well, do you remember whether or not, or do you know whether or not O'Keefe did come down to the bank?

"A. Yes; some time within a week he was down there, and Will and George and O'Keefe were in the directors' room for some little time—for some little time.

"Q. Do you know what went on in the directors' room? [2198—1868]

"A. No, I don't.

"Q. Did you have any conversation with either Kester or Kettenbach after Mr. O'Keefe had gone away?

"A. Jack. O'Keefe came out of the directors' room through the Lewiston National Bank building

(Testimony of C. W. Robnett.)

—that is, through the bank room—he was often in the bank part there when he was in town, and I heard George say to Jack., he says, ‘Well, Jack., you will see those parties and whenever we are ready you will see that they go up?’ and Jack. says, ‘Yes, I will attend to that.’ ”

Now, don’t you remember that is the way you testified in Boise?

A. Yes, that is the proposition, the way I testified in Boise in regards to this conversation.

Q. Now, was the evidence you gave in Boise true or false?

A. Why, I don’t see that it practically changes from this, except one conversation there that I haven’t referred to, the one between Mr. Kester and Mr. Kettenbach. The other bears out the same facts.

Q. Don’t you know that you never testified to the same conversations in Boise that you are testifying to here? A. I don’t see it that way.

Q. Don’t you know that you haven’t repeated this conversation that you say you had with George when he came back from Asotin here at all during this trial?

A. Well, the first conversation that I repeated in regards to that was a conversation that took place between O’Keefe and Mr. Kester and Mr. Kettenbach.

Q. Well, you never testified to that in Boise, did you? A. In Boise?

Q. Yes.

(Testimony of C. W. Robnett.)

A. I don't know. It is my recollection that I did.

Q. They came from the directors' room?

A. Yes.

Q. Well, that is the one—that is the one I read to you after [2199—1869] this one you say took place after this conversation when George came back from Asotin. That is the way you testified at Boise.

Mr. GORDON.—I don't understand that. Read that over again, if you please.

The Reporter thereupon repeated the last question.

Mr. TANNAHILL.—Q. What I mean is that you testified at Boise that this conversation took place after Jack. O'Keefe came out of the directors' room, and Kester and Kettenbach. A. Yes.

Q. You testified that that conversation took place after this conversation that you say occurred between George and Will, after George came from Asotin. Now, which is true?

A. You mean the conversation that he had—that he had seen Jack. O'Keefe—

Q. Yes.

A. —took place after the conversation when they came out of the directors' room?

Q. No—took place before.

A. Well, that did take place before; but I didn't refer to that conversation to-day until you brought it up. I was speaking of one conversation that took place between three of them, Jack. O'Keefe and the others, but not relative to a conversation that took

(Testimony of C. W. Robnett.)

place between Mr. Kester and Mr. Kettenbach, when these names were mentioned.

Q. How do you explain the fact that in response to my question to state the first conversation that you overheard between Jack. O'Keefe and Kester and Kettenbach, or between Jack. O'Keefe and Kester and anyone, that you testified that this conversation that you heard after Jack. O'Keefe and Kester and Kettenbach came out of the directors' room was the first conversation you heard regarding it?

A. Well, I meant that was the first conversation right at that time that I recalled, and the other—this other conversation took [2200—1870] place—I was testifying to the first conversation in regards to those others that I recalled, that that brought to my mind this other conversation when my attention was called to it, took place, after Mr. Kester returned from Asotin. I didn't state that there wasn't any others. I was stating the first conversation that I recalled at that particular time.

Q. Is that all the explanation you have to make of it?

A. Yes. There is no contradictory statements there in regards to it. I was relating the first conversation that I recalled to my memory in regards to those at that particular time.

Q. Now, Mr. Robnett, you have attempted to state the conversation relative to this agreement between Jack O'Keefe and Kester and Kettenbach, and you haven't testified the same any time you have tried

(Testimony of C. W. Robnett.)

to state it; neither have you testified the same regarding the amount that was to be paid the entrymen, and on three different occasions—four different occasions now—you have attempted to testify in regard to this. Now, will you explain why you testified to a different state of facts each time?

A. In what particular—in regards to the amount?

Q. In regard to the entire contract—the entire agreement—the very foundation of this conspiracy and agreement that you say you heard entered into.

A. I don't consider that I have testified on the material facts different. The substance of the conversations are the same, with the exception, perhaps, of the difference in the amount.

Q. Well, the language that you say was used by the different parties was different, and the time you say the conversations took place was different.

A. The time?

Q. Yes.

A. No; the conversation that happened in the directors' room was, I think my testimony in all the cases will bear out that it was in the evening. [2201—1871]

Q. In the evening?

A. That is, I mean in the afternoon, about the time of the closing of the bank, while Mr. O'Keefe was waiting to go to Asotin.

Q. And that was the first conversation?

A. That was the first conversation between Mr. O'Keefe and Mr. Kettenbach and Mr. Kester; but I didn't state that it was the first conversation that

(Testimony of C. W. Robnett.)

took place between Mr. O'Keefe and Mr. Kettenbach.

Q. You say that was the first conversation that you heard between Kester, Kettenbach and O'Keefe, do you? A. Yes.

Q. Well, now, you don't say that it was the first conversation you heard between Kester and Kettenbach, is that right?

A. Yes, sir, that's right.

Q. Now, you haven't got the dates the same. When did this conversation take place, anyway? What year was it?

A. I said it was in the fall of nineteen hundred—my recollection is the fall of 1902 or the spring of 1903.

Q. How does it come that you testified in your direct examination that it was the fall of 1903 or the spring of 1904? Or do you consider that that is not a material variance?

Mr. GORDON.—I submit that it is not proper for counsel to be arguing with the witness, and censuring him.

WITNESS.—Well, the conversation—that is my recollection at the present time is when it took place.

Mr. TANNAHILL.—Q. Then, when you testified that it was in the spring of 1903, or the fall of 1903 and the spring of 1904 on your direct examination, you was wrong, was you?

A. Why, I don't know which one of the dates is correct; but I know the conversation took place as

(Testimony of C. W. Robnett.)

stated, and the year—I might be mistaken in the year.

Q. Well, now, which is right: the fall of 1902 or the spring of [2202—1872] 1903; or the fall of 1903 or the spring of 1904?

A. Why, I think the fall of 1903 or the spring of 1904 is perhaps the proper time, when I can stop and give it the proper thought to place it.

Q. Then you was mistaken a while ago when you testified that it was the fall of 1902 or the spring of 1903? A. Yes, I was mistaken in the year.

Q. Now, when was the next conversation you heard between them, and what was it?

A. Well, there was a conversation took place between Mr. Kester and Mr. Kettenbach, in which Mr. Kester says, “Will, Jack. went up into the timber with some of the parties the other day, and will be back in a few days.” And Will says, “Is that so?” And George said, “Yes. When he comes back I will see him and we will have a talk with him.”

Q. Now, when did you think of that conversation?

A. Just at the present time, but perhaps I may have thought of it before.

Q. You have never thought of it before, have you?

A. I don’t know. It has just been called to my attention.

Q. You didn’t think of it when you testified at Boise? A. I don’t know as I did.

Q. You didn’t think of it when you testified on your direct examination?

(Testimony of C. W. Robnett.)

A. I don't know as I did.

Q. Well, now, state that conversation again.

A. Why, Mr. Kester says, "Will, Jack. O'Keefe and some parties went up into the timber, and they will be back in a few days, and I will see Mr. O'Keefe when they return and we will talk the matter over with him."

Q. Then what happened? I suppose they came in your presence to talk it over? [2203—1873]

A. Well, a number of different times after that Mr. O'Keefe was down and was in the directors' room, talking with the boys, and often came out there and waited in the bank—the main body of the bank—before he started home, and there would be remarks made in regards to the timber transaction, and it was often discussed one way and another there.

Q. Well, tell us what was said.

A. Well, the only particular conversation that I remember distinctly, while I know it was discussed a number of times, was just prior to the time of the proof, and Mr. O'Keefe was in there talking, and Mr. Kester says, "Well, Jack., when your people get ready to make the proof," he says, "you will get them the money and see that everything goes through all right, and that the proper transfers are made to protect us on the claims, and pay them the money that is coming to them," and Mr. O'Keefe says, "George, I will do that."

Q. Well, now, you didn't testify to that on your direct examination, though, did you?

(Testimony of C. W. Robnett.)

A. I don't know what I testified to.

Q. You didn't testify to that in Boise, either, did you?

A. I couldn't say.

Q. Now, who was present when that conversation took place?

A. That was in the main body of the room there. That was between Mr. Kester and Mr. Kettenbach—I mean between Mr. Kester and Mr. O'Keefe.

Q. And was Will Kettenbach there?

A. I couldn't say whether he was there or not.

Q. And where was you? A. I was there.

Q. Whereabouts?

A. Either writing up the cash-book or the depositors' ledger.

Q. And where were they sitting?

A. They were there close to the bookkeeper's desk. [2204—1874]

Q. How far from the bookkeeper's desk?

A. Oh, not over six feet, probably.

Q. What time of day was it?

A. It was along in the evening, while Mr. O'Keefe was waiting for the stage.

Q. Where was Will Kettenbach?

A. I couldn't say.

Q. Who else was in the bank?

A. I don't know—I presume Mr. Bradbury.

Q. Was any other clerical force there?

A. I couldn't state at the present time.

Q. Now, what else was said?

A. I don't know that I recall anything further.

Q. That is all you can think of that was said, is it?

(Testimony of C. W. Robnett.)

A. I don't recall anything further just at the present time.

Q. Now, what other conversation did you hear between Kester and Kettenbach?

Mr. GORDON.—Do you mean any other, Mr. Tannahill, or relative to these transactions?

Mr. TANNAHILL.—Q. Regarding any timber claims—timber transactions? How does it come that you didn't testify to what Kester said about Jack. O'Keefe's death—the morning Jack. O'Keefe died—at this trial? Did you conclude to leave that out?

A. Why, I testified in regards to the questions that were asked me. I can testify to that if you wish it.

Q. Well, I am not particular about you testifying to it. I don't care what you testify to. It struck me rather queer that it was left out.

A. Well, I can relate the conversation.

Q. Well, you can do as you please. If you want to relate it, you can relate it. I am not particular about it. [2205—1875]

A. Well, it don't make any difference to me.

Q. Well, you testified to some conversation with Goldsmith—between Goldsmith and Kettenbach and Dwyer. What was the first conversation you heard regarding that?

A. There was a conversation between Mr. Kester and Mr. Kettenbach, in the private office of Mr. Kettenbach.

Q. When was it?

(Testimony of C. W. Robnett.)

A. Along in December or the first—no, I think it was along in December of 1903.

Q. In December, 1903? Who was present?

A. Mr. Kester and Mr. Kettenbach.

Q. What time of day was it?

A. Well, I don't recall exactly what time of day it was. Anyway, Mr. Kester went into Mr. Kettenbach's office and says, "Will, do you think we can arrange to have Mr. Dwyer appointed to assist Mr. Goldsmith in the selections and cruising of the timber for the State?" and Will says, "Yes, I kind of think we can. Mr. Goldsmith is kind of under obligations to me. Mrs. White has always helped him out, and I have extended favors to him, and I think if we put it up to Mr. Goldsmith as a favor we can get Mr. Dwyer appointed to assist in that work." "Well," Mr. Kester says, "if you can, why it would be a great assistance, and it will assist us very much in getting the timber that we want." And Will says, "I will see Mr. Goldsmith, or send word to him to come down here and see me, and I will take the matter up with him and see what can be done along that line."

Q. Was anything else said?

A. Mr. Kester says, "I wish you would, Bill, and attend to it right away."

Q. Anything else?

A. That is about all of that conversation, and the next conversation that took place, Mr. Goldsmith came into Mr. Kettenbach's office and Mr. Kettenbach told him that he had sent for him to see if he

(Testimony of C. W. Robnett.)

[2206—1876] couldn't appoint Mr. Dwyer to assist him in the State land selections, in cruising the timber and getting out the information for the State in their timber selections that they were going to make in these new townships that had just come in. Mr. Goldsmith says, "Well, I don't know. I think there has been other men selected for that work, but I will see what I can do, but I don't know about it, I may be criticised for going out of the State to select a man; people are liable to say, 'Why not take a man in the State of Idaho? Why go into Clarkston, in the State of Washington?'" Mr. Kettenbach says, "That need not to make any difference; you can easily get around that. Clarkston and Lewiston are right close together, and Mr. Dwyer is the man that is the best adapted to make these selections, and knows more about where the timber lies, and can render the best service."

Q. Anything else that you can remember?

A. Well, Mr. Goldsmith says, "I will see what I can do, and if I possibly can I will appoint Mr. Dwyer to the position to help make the cruising and the recommendations for the land to be selected."

Q. Anything else?

A. Mr. Kettenbach told him that he would appreciate it if he could so arrange it, and Mr. Goldsmith said he would let him know in a few days.

Q. Anything else?

A. No; that's all I recall at the present time.

Q. Now, where did you say that conversation took place? A. In Mr. Kettenbach's private office.

(Testimony of C. W. Robnett.)

Q. Who was present in the bank at that time?

A. I don't know who all were in there. I think along in the afternoon this conversation took place; I would not be right positive about that.

Q. Was it during banking hours?

A. No, I would not be positive. I know where I was sitting; I was sitting at the flat-top desk when the conversation took place. [2207—1877]

Q. You are sure of that, are you?

A. Yes, sir, I am pretty positive.

Q. And do you know where Goldsmith was sitting?

A. Goldsmith was sitting in Mr. Kettenbach's private office.

Q. And where was Kester sitting?

A. I don't remember right now exactly whether Mr. Kester was in there or not.

Q. Do you know whether he was in there or not?

A. Not at this particular conversation I don't.

Q. Where was Kettenbach sitting?

A. Mr. Kettenbach was sitting at his desk.

Q. Now, what was the next conversation you heard regarding it?

A. Was when Mr. Goldsmith came and notified them that he would appoint Mr. Dwyer.

Q. Now, who did he notify?

A. Mr. Kester and Mr. Kettenbach.

Q. Where were they at that time?

A. In Mr. Kettenbach's private office.

Q. And did Goldsmith go in there?

A. He went into the private office, yes, sir.

(Testimony of C. W. Robnett.)

Q. Kester and Kettenbach were in the private office, were they?

A. Why, Mr. Kettenbach was, but I couldn't say positive that Mr. Kester was when he went in there; but after Mr. Goldsmith went in there he came in and sat down on the end of the sofa next to the door that leads out into the main body of the bank; and Mr. Goldsmith told Mr. Kettenbach that he could make the—that he would appoint Mr. Dwyer to assist in the cruising of the timber, and told him to notify him and have him meet him some place to make the arrangements to go in through the timber, and Mr. Kettenbach said that he would.

Q. Was Bradbury in the bank at that time?

A. Very likely he was.

Q. Do you have any recollection on the subject at all? [2208—1878]

A. No, I don't know as—I haven't any recollection. I don't know that he was or that he wasn't.

Q. Do you have any recollection of anyone else that was in the bank?

A. No, not at that particular time I don't.

Q. Do you have any recollection of what anyone else was doing around the bank?

A. No, I don't know as I do.

Q. Do you have any recollection of anyone coming into the bank during these conversations?

A. No, sir.

Q. Do you have any recollection of anything happening except this conversation that you testify to?

A. No. On account of the nature of the banking

(Testimony of C. W. Robnett.)

transactions and the nature of the business that was taking place right along, and with nothing to fix them in my mind, I would not recall the conversation of any of them. There was nothing that would cause me to notice that, any different from any other transaction of the bank.

Q. Now, when was the next conversation you heard?

A. Why, I don't know whether it was the next conversation that I heard, but there was one of the conversations that I heard in regards to it had when Mr. Dwyer returned from the timber a few days ahead of Mr. Goldsmith and stated that—or came into the bank, and Mr. Kettenbach was sitting in his private office, and Mr. Dwyer came up right direct from the train, and Mr. Kettenbach says, "Hello, there, Bill; when did you get in?" He says, "I have just came in." "Well," he says, "have you got the maps and the locations and the descriptions of the timber that you want me to give Mr. Goldsmith?" And he says, "I have them, and I will make out the maps and the descriptions and will give them to you so that you can give them to Mr. Goldsmith when he comes in." He says, "He will be in in a day or two."

Q. What else was said? [2209—1879]

A. He says, "I am going over home now, and will either be over this evening or to-morrow morning."

Q. Was anything else said?

A. He says, "How did everything go up there in the timber?" Mr. Kettenbach asked him how everything went up in the timber, and he said, "Every-

(Testimony of C. W. Robnett.)

thing went along fine,” and also Mr. Dwyer says, “I had some little—a good deal of fun in steering Mr. Goldsmith away from some of the homestead cabins that I didn’t want him to see and up against places that I wanted him to put in the list on the contest list of claims.”

Q. What else was said?

A. “Well,” he says, “as soon as you get the list made out, Bill, bring it over and I will get it ready to present to Mr. Goldsmith when he comes in.”

Q. Now, Mr. Robnett, don’t you remember that this conversation you have testified to is nothing like the one you testified to on direct examination?

A. In what particular? I don’t know just what I testified to.

Q. You testified as follows:

“A. Well, Mr. Dwyer came in from the timber a few days ahead of Mr. Goldsmith, a day or two, and he came in there—

“Q. In where?

“A. In Mr. Kettenbach’s private office.

“Q. Yes.

“A. And Will says, ‘Well, hello, Bill, when did you get back?’ He says, ‘I have just got in from the train.’ He says, ‘How is everything going?’ He says, ‘All right.’ He says, ‘Have you got memorandums made of the land you want out—not selected by the State?’ and he says, ‘Yes.’ He says, ‘Get them up in shape and I will see Goldsmith and give them to him.’ ”

Don’t you remember that that is the only thing

(Testimony of C. W. Robnett.)

you testified to on direct examination regarding that conversation when Dwyer came in from the depot?

[2210—1880]

A. Why, it might have been all I testified to, but this other took place at the same time.

Q. Well, don't you know you didn't testify on direct examination to what you are testifying to now? How do you explain that discrepancy in your evidence?

A. Well, all the discrepancy there is in the evidence there is more in the cross-examination than there was in the first is all, practically.

Q. And that is your opinion about it, is it?

A. Yes, sir.

Q. You have no other explanation to make, have you?

A. Well, I don't know as there is any explanation to be given. I don't see any discrepancy, any more than there is more to it.

Q. Well, was there any more conversation with Mr. Goldsmith?

A. Well, Mr. Dwyer came in and gave Mr. Kettenbach the papers relative to the claims that he wanted left out, or arranged so they would have a chance to get them, and then shortly after that Mr. Goldsmith came into Mr. Kettenbach's private office and he handed him the maps and the list—and some papers which were the list of the claims to be left out.

Q. I will ask you, Mr. Robnett, in relation to this conversation you say that Dwyer and Kettenbach

(Testimony of C. W. Robnett.)

had immediately after Dwyer came down from the timber, if you didn't testify as follows:

“Q. Let me ask you this before you go into that.”

Mr. GORDON.—What page are you reading from?

Mr. TANNAHILL.—Page 399. “Do you know whether or not, after the conversation you related prior to this one, Mr. Dwyer went up into the land and then returned and had a conversation with the other defendants? A. Yes.

“Q. Well, will you state what that was?

“A. Why, Dwyer came down from the timber after he had been up [2211—1881] there and left some of his men up there, and Will asked him—Mr. Kettenbach asked him how he was getting along, and he says, ‘I am having a great time up there sending Scotty and some others out to see some of those claims of the squatters, and picking up the notices and the land that was picked out by Fitzgerald and others.’ ”

Don't you remember you testified to that in Boise?

A. Well, perhaps I did. That statement was made there.

Q. How does it come now that you testify that he told him that he had a great time steering Goldsmith away from these cabins that the squatters had on the land?

A. That was some of them that they particularly wanted left out. That don't conflict with the other; the other statement could be made there also.

Q. I know, you can state a whole lot of things;

(Testimony of C. W. Robnett.)

but I am asking you how you reconcile the conflict in your evidence that you are giving? You were supposed when you were at Boise to tell the truth and the whole truth.

A. Well, I was telling the truth.

Q. And you are supposed to tell the truth now. You realize that you didn't tell the truth at Boise and here both, don't you?

Mr. GORDON.—I submit that that is not a proper way to treat a witness.

Mr. TANNAHILL.—Q. You realize that, don't you?

A. I am telling the truth here, and I told the truth at Boise.

Q. Well, then, you didn't tell at Boise that Dwyer went out—that Dwyer said he had had a great time steering Goldsmith away from these cabins, did you?

A. Well, that wouldn't necessitate that I wasn't telling the truth here, that I left it out. Perhaps I didn't recall that portion of the conversation.

Q. And you realize that there is no similarity between the evidence [2212—1882] that you gave at Boise, regarding the conversation between Dwyer and Mr. Kettenbach when he came down from the timber, and what you gave on direct examination now; don't you realize that?

Mr. GORDON.—Objected to. I object to counsel arguing with the witness.

WITNESS.—I don't see where the difference comes in there. What particular difference is there?

(Testimony of C. W. Robnett.)

Mr. TANNAHILL.—Q. That is the only explanation you have to make of it, is it?

A. Perhaps in one conversation I don't repeat all the different phrases that took place in the conversation; but there is no conflicting statements that I see.

Q. You didn't testify at Boise that Kettenbach told Dwyer to fix up the maps and give them to Kettenbach, did you?

Mr. GORDON.—How is that?

Mr. TANNAHILL.—Q. You didn't testify that in this first conversation that Kettenbach told Dwyer to fix up the plats for Goldsmith, did you?

A. I don't know whether I did or whether I didn't.

Q. I have just read you what you did testify to.

A. Well, then, perhaps I left that out; but that was the instructions that Mr. Kettenbach gave Mr. Dwyer while he was there.

Q. Now, when was the next conversation you heard regarding it?

A. Well, the next after Mr. Goldsmith left Mr. Kettenbach's private office, I went in and asked, I says, "Will, did you mention to Mr. Goldsmith—"

Q. Just talk right along, Clarence. You are awfully slow talking. I don't want to hurry you, but I want to get through.

A. All right. I will do the best I can. I says, "Will, did you give the numbers of my claim that I wanted Mr. Goldsmith to leave out?" He says, "No, Clarence, I forgot all about it." He says, "You see Mr. Goldsmith and give him a slip of

(Testimony of C. W. Robnett.)

paper with the numbers on it [2213—1883] and tell him I told you to see him and it will be all right," and I saw Mr. Goldsmith and gave him the numbers.

Q. Where did you see Mr. Goldsmith?

A. My recollection is it was in front of the Raymond Hotel.

Q. What kind of a paper was it you gave him with the numbers on it?

A. I think it was perhaps on the back of a deposit slip.

Q. Now, what did Goldsmith tell you?

A. He said that would be all right, and he would attend to it.

Q. And then what happened next?

A. Why, the claim was selected with the others, with the first list of contest entries or claims that was selected by the State.

Q. Well, now, there is one question I forgot to ask you, Mr. Robnett: Don't you remember that Dwyer stayed up in the timber several days after Goldsmith came down, and didn't come down before Goldsmith at all?

A. No, I don't know as that took place. Anyway, when he came down Mr. Goldsmith wasn't in Lewiston. He may have been out on the reservation.

Q. Well, you testified that he came down from the timber before Dwyer did.

A. Well, he came to Lewiston before, and Goldsmith was up there in the timber; that's what I understood. Goldsmith hadn't come in. He was to

(Testimony of C. W. Robnett.)

have this ready by the time Goldsmith came into Lewiston.

Q. That is the only explanation you have to make of that, is it?

A. Yes, sir. He spoke about the other people being up in the timber, and I supposed Mr. Goldsmith was there, because he was to have this ready when Mr. Goldsmith came into the bank to see Mr. Kettenbach.

Q. Now, go ahead and state the next conversation, or what happened next after you gave Goldsmith this slip of paper with the numbers of your claim on it.

A. The next notice I had was, I think, a notice in the paper [2214—1884] that the claim had been selected, and I seen Mr. Goldsmith and asked him why that had been done, and he said he had to make the selection, but there was a number of them on the contest list, and that those claims would not very likely—that the State would not go ahead with the contest list and would let the whole matter drop, and for me not to worry, this would be all right, and it would work out right in the end.

Q. Was this a conversation with Mr. Goldsmith or Mr. Kettenbach?

A. This was a conversation with Goldsmith.

Q. Where did that take place?

A. I don't know just exactly where it did take place; I think on the street some place.

Q. And do you know when it was, in relation to the time you gave him the numbers of the land?

(Testimony of C. W. Robnett.)

A. It was after the notice came out of the selections of the State.

Q. Now, you testified on direct examination something to the effect that "I seen Kettenbach give Goldsmith the plats of this land that he wanted left out." What about that?

A. Well, I testified to that on cross-examination. I just testified to it a moment ago.

Q. Well, testify to that again. I don't remember just what you did say about it.

A. I said Mr. Goldsmith came into Mr. Kettenbach's office, and Mr. Kettenbach gave him the plats and the papers on which were the descriptions of the land that Mr. Dwyer had made up for him, and after Mr. Goldsmith went out I went in and asked Mr. Kettenbach if he put on—gave him the description of my claim, and he said he had not.

Q. Now, Mr. Robnett, you testified to some people being in that line-up of April 25th, 1904. You also said Mary Kettenbach, wife of the defendant, was in that line-up, and that Mabel Atkinson was in the line-up. Are you sure of that?

A. Why, they might not have been there for their filing; they [2215—1885] were there helping to hold down the—they were sitting up there in the chairs at different times; they sat there over Sunday and a couple of days or three days; and they were there sitting in the chairs at different times.

Q. But you don't know whether they filed or not, do you?

A. I don't know whether they filed at that exact

(Testimony of C. W. Robnett.)

time; they filed a little later.

Q. Now, isn't it a fact that there was no ladies there at all except on the morning of the filing; that the ladies were excused, and that they didn't sit there at all?

A. There was ladies there sitting at different times. There was perhaps at one time for a while they excused all the ladies; but at different times I passed up and down the halls there and there was ladies sitting in those chairs.

Q. And you say you went up to the land office and got 18 filing papers? A. Yes, sir.

Q. Well, there was nothing unusual about that, was there?

A. Why, perhaps not in that particular feature of it—just getting the filing papers.

Q. If Mr. Dwyer had located 18 people it was his duty to get the filing papers and see that they were properly made out, and the descriptions inserted correctly, wasn't it?

A. Well, that is not a proposition for me to state what I consider about that. I am simply stating that I got the papers for Mr. Dwyer.

Q. Well, you consider that that is the duty of a locator, do you not?

A. Why, yes; it is his duty to see that those entries are properly made out, and to go with them and see that they are filed, so that he knows they are filed.

Q. That is what you did when you located people?
[2216—1886] A. Yes, sir.

Q. Now, you testified to a conversation you heard

(Testimony of C. W. Robnett.)

between Kettenbach and Colby and Emory. What was the first conversation you heard in regard to that?

A. The first conversation was between Mr. Colby and Mr. Kester.

Q. All right. What was that, or when did that occur? A. You mean the time of day?

Q. Yes, and about the year?

A. I think that was along in the summer there or the latter part of the spring of 1903.

Q. Well, what time of day was it?

A. Why, this conversation took place some time in the forenoon.

Q. And where did it take place?

A. Why, at Mr. Kester's desk.

Q. At Mr. Kester's desk? A. Yes.

Q. Where is his desk?

A. It was on the north—facing from the main body of the working room of the bank, against the north side of Mr. Kettenbach's office.

Q. Where was you?

A. I was sitting at the flat-top desk, which is about two feet away from Mr. Kester's desk.

Q. And who did you say that was with?

A. Mr. Colby and Mr. Kester.

Q. Now, what was said?

A. Why, Mr. Colby came into the bank through Mr. Kettenbach's private office, and pulled a chair up and sat beside Mr. Kester, and he says, "George, Mr. Emory and I have located those entrymen in 39-3, and we were to give them \$200.00 apiece for

(Testimony of C. W. Robnett.)

their rights, and furnish them the money to prove up with, and they were to deed the claims over to us immediately after their proof. Now, we have been unable to arrange for the proof money, and I came in to see if you and Mr. Kettenbach [2217—1887] wouldn't take these claims off of our hands under the same conditions under which we—with the entry-men, under which we entered into with them, and Mr. Kester asked him what the claims were, and he stated that they were good claims, that Mr. Emory had cruised them the winter before, and they were all right, and he says, "You know that Mr. Emory knows timber," and Mr. Kester says, "Yes, Mr. Emory knows timber when he sees it. Well, I will take the matter up with Mr. Kettenbach when he comes in, and will let you know just what he says about taking these claims up."

Q. Now, who else was in the bank at that time?

A. I presume Mr. Bradbury was.

Q. And that is all you can remember now of that conversation?

A. No. There might have been more to the conversation. I don't just recall any more of the features of it just at the present time.

Q. I am asking you everything you can remember about it, Mr. Robnett. If you can remember anything more now go ahead and state it.

A. Why, Mr. Kester asked him who these parties were, and he said that they were men that had been, or part of them had been working for him—for them—in the woods or at the mill, and that he knew

(Testimony of C. W. Robnett.)

them, and knew that they would carry out their part of the agreement.

Q. Was there anything else that was said?

A. No, I don't know as I recall anything at present.

Q. Now, when was the next conversation you heard regarding it?

A. Was when Mr. Kettenbach came into the office. Mr. Kettenbach went into his private office, and Mr. Kester went in and sat down on the end of the sofa, and says, "Will, Mr. Colby was in to see me a while ago in regards to those claims in 39-3 that Fred Emory had cruised out, and that they had located people on and were to pay them \$200.00 a claim, but now they were unable to get the proof money, and they want us to take the claims over under the same conditions with the entrymen that they had entered into with them, and have us furnish [2218—1888] the money and pay the entrymen \$200.00 and have them deed us the claims."

Q. Anything else in that conversation?

A. Mr. Kettenbach asked Mr. Kester if he had talked with Mr. Dwyer in regards to the timber up there. He said no, he hadn't, but, he says, "before we give them a definite answer we will have Mr. Emory come down and talk with him, and of course we will talk with Mr. Dwyer in regards to it."

Q. Anything else that was said?

A. Well, Mr. Kettenbach said, "Well, George, if you think everything is all right, why I am perfectly willing to go through with the deal and take

(Testimony of C. W. Robnett.)

up the claims."

Q. Anything else?

A. "But I think we ought to know something about what Mr. Dwyer thinks of these claims, or if he knows anything about these particular claims."

"Well," George says, "we will see Mr. Dwyer and find out about it, and I think that Mr. Emory and Mr. Colby will be here to-morrow morning to know what we are going to do."

Q. Anything else said?

A. No, I don't know as I recall anything at the present moment.

Q. Now, this last part of the conversation, you didn't think to testify to that on your direct examination, did you?

A. I don't know just exactly what I testified to.

Q. And you didn't testify to that at Boise?

A. Perhaps not.

Q. Didn't you testify as follows at Boise:

Mr. GORDON.—What page are you reading from?

Mr. TANNAHILL.—Page 407.

"Q. Now, do you know of any other conference relative to those matters?" That is just after Colby had come in and talked with Mr. Kettenbach.

A. With Mr. Kester? [2219—1889]

Q. With Mr. Kester, yes. And you answered as follows:

"A. Yes. That same day, after Mr. Colby had gone away, Mr. Kettenbach came in and Mr. Kester went into his private office, and they had a talk

(Testimony of C. W. Robnett.)

relative to the proposition that Mr. Colby had made, and Will Kettenbach asked Mr. Kester what he knew about Fred Emory's judgment of timber, and whether he thought the claims were all right. Mr. Kester answered back that he thought that Fred Emory knew a great deal about the timber, but before they decided what they would do they would talk the matter over with Dwyer.

"Q. Do you know of anything further in the matter?

"A. And Mr. Kester stated that he thought the claims were all right, and that they had better take them; and Mr. Kettenbach says, 'All right, if you think they're all right, George, and if Dwyer thinks the timber is all right, we will take care of the claims.' "

Now, then, didn't you testify to that at Boise?

A. Yes, sir.

Q. And that was all you testified at Boise occurred in that conversation, isn't it?

A. Well, I testified—that's all I recalled at that particular time.

Q. Now, you didn't testify that there was anything said in that conversation that these men were to have \$200.00 for their right, did you?

A. Well, perhaps I didn't.

Q. You have thought of that since, haven't you?

A. Very likely.

Q. And you didn't testify in that conversation that there was anything said between Kester and Kettenbach relative to terms and conditions that

(Testimony of C. W. Robnett.)

these men were taking them up with Emory and Colby, did you?

A. I don't know as I did, if that is all I testified to.

Q. That's all you testified to. I am reading from the record, and reading it all. [2220—1890]

A. Well, then, that, perhaps, is all I testified to. But that don't state that this other didn't take place.

Q. And you didn't testify at Boise that Kester told Kettenbach that Emory and Colby wanted them to take the entrymen off their hands under the same conditions that they had them, did you?

A. Perhaps I didn't.

Q. You have thought of that since, haven't you?

A. Well, yes.

Q. Now, was there anything else said in regard to those entries?

A. The next conversation took place when Mr. Colby and Mr. Emory came into Mr. Kettenbach's private office, I think it was the next morning, some time during the forenoon, and Mr. Kester I think went in after they came in; all four of them at any rate were in the office there, and they were discussing this proposition relative to the timber, and Mr. Kettenbach asked Mr. Emory if he had cruised those claims, and what he thought they would go, and he said he had been all over them and cruised them out last winter, and that they were the best claims in that portion—or the best claims in 39-3 that was subject to filing, or being proved up on.

Q. Was there anything else said?

(Testimony of C. W. Robnett.)

A. I don't know. I don't recall just exactly what else was said at this time; but anyway Mr. Kester said, "We will go ahead and take those claims under the same conditions with the entrymen, and will furnish the money for the final proof, and will take the claims and pay the entrymen their \$200.00."

Q. For what?

A. For their right—for their claims and their right.

Q. Now, don't you remember that you testified at Boise as follows: I am reading from page 414:

"Q. Well, state what was said, and who said it.

"A. It was Mr. Colby. In that first conversation with Mr. Kester he stated that these entrymen were to turn over their claims to him, [2221—1891] on a payment beyond the actual expenses and the money for the taking up of the claims, for a consideration of \$100.00 apiece."

And in your direct examination you testified as follows:

"I think it was the next morning that Mr. Colby and Mr. Emory came into the office, and they talked the matter over, and Mr. Emory told him that he had checked those claims over and he knew they were the best claims in that whole township that was subject to filing. And Mr. Kester told Mr. Colby that they would go ahead and furnish the money for the proof and take the claims under the same conditions that they had with the entrymen, to pay them \$200.00 for their right."

(Testimony of C. W. Robnett.)

How do you explain the conflict in those two statements?

A. The conflict is wrong in regards to the amount. If that is the way I testified at Boise I made a mistake in the amount. The amount, as I recall it, was \$200.00.

Q. \$100.00 is a very small matter with you, is it?

A. No, it is nothing of the kind. I think the amount was specified at that time, but my recollection is that I testified to \$200.00 down there.

Q. Well, it has been longer since you say you heard the conversation now, than it was when you testified at Boise, has it not? A. Yes, sir.

Q. Is your recollection more keen now than it was when you testified at Boise?

A. It is often the case when a person comes to think about a proposition after a number of years the longer he thinks the more accurate he gets in regards to the exact conversation.

Q. And isn't it often the case, Mr. Robnett, that the longer a man thinks of some small thing, and revolves it over in his mind, the larger it gets, too?

A. Well, not in all cases.

Q. And this has increased from \$100.00 to \$200.00, hasn't it?

A. No. This is a matter of accuracy in regards to the amount, I suppose. [2222—1892]

Q. And hasn't all these other matters you have testified to magnified in the same proportion?

A. No, sir.

Q. But you admit that you were mistaken in

(Testimony of C. W. Robnett.)

regard to the amount as to the price they were to receive; and you admit that you didn't testify at Boise the same way that you are testifying to-day, don't you?

A. Why, I admit that the \$100.00 was a mistake; but I don't state that my testimony at Boise conflicts at all with my testimony here in regards to any of the material points, unless it would be relative to the amount.

Q. You consider that is a material point, do you?

A. Why, no, I don't consider it is a material point; it is simply what they was to receive, is all.

Q. Well, that was a part—was the very foundation of the contract and agreement, was it not?—the amount they were to receive?

A. Why, it was a portion—it would be, of course, a part, if the claims were worth what they were going to give for them; they wouldn't have taken them if they were paying the entrymen more than they were worth. If they weren't getting a bargain, of course they wouldn't have taken a hold of it.

Q. Isn't it a fact that you are mistaken on a whole lot of other matters?

A. No, sir. It is a whole lot easier to be mistaken on the amounts, because it is an easy matter to be mistaken on what each individual entryman received, where it wouldn't be on the conditions and terms under which they took up the land.

Q. Now, was there anything else—any other conversation you heard in regard to this Colby and Emory matter?

(Testimony of C. W. Robnett.)

A. Mr. Kester told Mr. Colby when it came time for the entrymen to make their proof, for him to come into the bank, and he would give him the money, and that Mr. Colby was to see that the entrymen [2223—1893] made the proof and deeded the property over and got their \$200.00.

Q. You didn't testify to that on your direct examination, did you? A. I might not.

Q. You have thought of that since?

A. Why, perhaps that conversation wasn't asked for.

Q. And you didn't testify to that in Boise, either, did you?

A. I don't know what I testified to, in regards to whether that was left out or not.

Q. And don't you know, Mr. Robnett, that I cross-examined you in Boise, and asked you about every conversation, and every thread of a conversation that you could think of, that Mr. Colby and Emory or either of them had with Kester and Kettenbach or either of them; and that you never mentioned that part of the conversation in Boise?

A. That might be true. I didn't recall it at that time.

Q. Your memory is brighter now, is it?

A. The more I think of these propositions, the more conversations come up, and there were dozens of conversations there in regard to timber.

Q. And the more they are magnified?

A. No, they are not magnified, anything of the kind; simply different phases of them are coming

(Testimony of C. W. Robnett.)

back to my recollection.

Q. The more you think of that, the more conversations you can think of, is that it?

A. Yes, sir; the different remarks made.

Q. Now, was there any other conversation you can think of between Kester and Kettenbach, and Colby and Emory, or either of them?

A. Why, the date of the proof of these Colby claims Mr. Colby came into the bank, went into Mr. Kettenbach's private office, and Mr. Kester called me in there and told me to bring in a certain amount of money; I think it was \$2,400.00—it was either \$2,400.00 or \$2,500.00—and make a cash item against K. & K. [2224—1894]

Q. You didn't testify to that at Boise, either, did you?

A. Why, I think I started in to testify in regards to that, and it was ruled out, on account of referring to final proof.

Q. No; there wasn't anything ruled out in regard to the money furnished, Mr. Robnett. All that was ruled out was in relation to questions asked at final proof, and the procuring of witnesses at final proof; but there was nothing ruled out in regard to the money furnished entrymen.

A. Well, it is my recollection that I commenced to testify in regard to that was *was* stopped.

Q. Well, was there any other conversation that you can think of?

A. I don't know. I don't recall any at present.

Q. You testified to a \$100.00 bill that was used.

(Testimony of C. W. Robnett.)

What was it you said about that?

A. I said that there was a \$100.00 bill that was kept in the cash, that was handed to Mr. Dwyer at different times to pay the entrymen, that was handed to the entrymen and which was handed back to Mr. Dwyer, to pay the location fee, and that it had been passed around, and it finally got back into the bank, and it was carried there in the cash.

Q. What kind of a \$100.00 bill was it? Was it a new one or an old one?

A. I don't know whether it was a brand new bill or not, but it was a bill that wasn't folded up or ruffled in any respect; it wasn't an old bill.

Q. How long was it used?

A. Oh, perhaps over a period of three months, or such a matter.

Q. How was it kept in the bank?

A. In an envelope, underneath the cash drawer.

Q. And who was the cashier at that time?

A. Mr. Kester.

Q. And who was the assistant cashier? [2225—1895] A. Mr. Bradbury.

Q. And it was in a place where Mr. Bradbury would have had to have seen it, was it not?

A. Yes, sir.

Q. And it was kept there for how long?

A. Why, I presume a period of three months, or such a matter.

Q. And during all that time it wasn't folded?

A. I don't think so. It was carried in an envelope, not folded. All large bills that were carried in the

(Testimony of C. W. Robnett.)

cash were put in an envelope and put underneath the small change drawer.

Q. And Mr. Bradbury was cashier, or assistant cashier, or paying teller there, all the time, wasn't he?

A. Yes, sir.

Q. How long was he paying teller?

A. Oh, for quite a long period. I don't recollect now just how long.

Q. That was John Bradbury?

A. John Bradbury, yes, sir.

Q. And he was paying teller there during all the time that \$100 bill was in that envelope and kept in that drawer?

A. Yes, sir.

Q. And when it was taken out by Mr. Dwyer?

A. Yes, sir.

Q. Now, who would take that \$100.00 bill out?

A. Why, Mr. Dwyer.

Q. How would he get it? He wouldn't go in there and finger that cash, would he?

A. Well, whoever was at the window would hand it out.

Q. Well, who did it?

A. Why, I presume Mr. Bradbury did at times.

Q. Well, don't you know anything about it?

A. All I know is that that bill was used, and that there was conversations in regards to that bill.

[2226—1896]

Q. How did Mr. Dwyer get hold of it?

A. Why, it was handed out by somebody inside of the bank.

Q. Who handed it out?

(Testimony of C. W. Robnett.)

A. I don't know but what I handed it out once or twice, and I don't know but what Mr. Kester or Mr. Kettenbach did. It was handed out at different times. I know that the bill was handed out.

Q. Now, can you mention any particular person that handed that bill out to Mr. Dwyer?

A. Yes, sir; Mr. Kettenbach handed it out one time, I know, because I was standing at the window.

Q. When was that?

A. That was prior to the time of the filing, or right after the filing of a number of people in Clarkston and Asotin.

Q. Who was it?

A. I think it was Guy Wilson and others that filed about that time.

Q. That is guesswork on your part, isn't it?

A. Why, no. I know that the bill was handed out, but just the particular—the exact time and all I don't know; I don't recall all those features—particular facts—in regards to these transactions; but I know it was handed out there for these entrymen to pay their location fees, so that they could say that they had paid their location fees.

Q. Well, now, as a matter of fact, Mr. Robnett, you have no distinct recollection of any particular person handing that \$100.00 bill out to Mr. Dwyer, have you?

A. Why, yes; I said Mr. Kettenbach handed it out there to him once, and when it came back Mr. Kettenbach asked Mr. Dwyer how many location fees that bill had paid, and he said it had paid a number, but it had got back into the bank all right in the evening.

(Testimony of C. W. Robnett.)

Q. Now, can you think of anyone else who handed that bill out?

A. Why, not to be right positive of it. [2227—1897]

Q. And what time of day was it Kettenbach handed that bill out to Dwyer?

A. Along in the forenoon.

Q. How near noon was it?

A. Oh, perhaps around a little after ten o'clock.

Q. What year was it? A. 1904.

Q. And what was you doing at the time?

A. I was working there in the bank.

Q. What was you working on?

A. I don't know exactly what I was working on at that particular time.

Q. Whereabouts was you in the bank when the bill was handed out?

A. I was sitting down there by the flat-top desk.

Q. By the flat-top desk? A. Yes, sir.

Q. And do you have any recollection of what you was doing at the time?

A. No, I don't recall just exactly what I was doing.

Q. Where was Bradbury at the time?

A. I don't know just where he was.

Q. Where was Kester at the time?

A. I don't know.

Q. Which window did Kettenbach hand the bill out at? A. The cashier's window.

Q. Was it the cashier's window, or the teller's window? A. The cashier's window.

Q. Did he give him the envelope and the bill, too?

(Testimony of C. W. Robnett.)

A. No.

Q. What did he do with the envelope?

A. The envelope was put back underneath the cash drawer.

Q. Was there anything written on the envelope?
[2228—1898]

A. No, I don't know as there was.

Q. What kind of an envelope was it?

A. Just a plain envelope; one of these brown envelopes that the Lewiston National Bank had, with the "Lewiston National Bank" printed on the upper left-hand corner.

Q. Was there a stamp on it?

A. A postage stamp?

Q. Yes. A. No. [2229—1899]

Mr. TANNAHILL.—Q. Now, Mr. Robnett, you spoke of the Carrie D. Maris claim. What was your conversation with regard to that? What was your arrangement with Carrie D. Maris?

A. Do you want the arrangements, or do you want the conversations?

Q. The conversations.

A. I went into Vollmer's store where she was working, and asked her if she wanted to take up a timber claim, and she said that she didn't have the money, but she would like to take up a timber claim if it could be arranged, and I told her I would arrange for the money and get her a location, pay the location fee, and when the claim was proved up on we would divide the profits.

(Testimony of C. W. Robnett.)

Q. Any other arrangements you made regarding it?

A. I told her I would see and let her know when she was to go up to the timber, and in a day or so after that I saw her and asked her when she could go, and she stated that she would like to go about a certain time, if it could be arranged, and I told her I thought I could, and I went to see Mr. Jensen, and he said she could, and he took her up to the timber, and she filed and proved up on the claim and gave a mortgage to Mrs. Sullivan, and I advanced her money from time to time and took a deed from her.

Q. Then, what did you do with the claim?

A. I sold it to Kester and Kettenbach.

Q. How much did you get for it? A. \$1,600.00.

Q. What did you do with the money?

A. Applied it to my account in the Lewiston National Bank.

Q. When did you first have a conversation with Kester and Kettenbach regarding the sale of this claim to them?

A. Why, buying the claim outright, the first conversation in [2230—1900] regard to that individual claim was after Joe Molloy had made me an offer on the claim, and I told them if they didn't want the claim I was going to sell it to Mr. Molloy, and they said they wanted the claim and I told them all right, then I would sell them the claim.

Q. How long was that after final proof was made?

A. Oh, it must have been a couple of years, or such a matter.

(Testimony of C. W. Robnett.)

Q. How long after final proof was made?

A. Perhaps a couple of years.

Q. Had you had any conversation with Kester and Kettenbach regarding this claim before that, before you took up the question of selling it to them?

A. I had spoken about all the claims I had had anything to do with.

Q. Well, this particular claim?

A. Yes, this particular claim was mentioned.

Q. When was it?

A. A number of different times.

Q. When was the first time it was mentioned?

A. Why, at the time right after she filed.

Q. Right after she filed? Who was that with?

A. Both Mr. Kester and Mr. Kettenbach.

Q. Both of them?

A. Yes, sir; at different times.

Q. Where did you talk to them?

A. In the bank.

Q. What was said?

A. In talking about the different claims that we had there—

Q. I don't want a general conversation. I want the language that was used by you and by these men, whichever one it was with, regarding this claim.

A. Well, it was brought up at a number of different times, and [2231—1901] Mr. Kettenbach and both Mr. Kester, at different times, one particular time each one of them asked me where that claim was located, and under what conditions I had it, and I told them that I had got Del. Maris to file on it, and

(Testimony of C. W. Robnett.)

that we were to divide the profits, whatever was made out of the claim.

Q. When was that, in relation to the time she made final proof?

A. Why, it was before she made final proof.

Q. Which one of these men was it that you talked to about it? A. I talked to both of them.

Q. Both of them together?

A. No; I talked to both perhaps together at different times when it was brought up, but it was brought up different times when they were separate.

Q. Tell us one time when they were separate.

A. Well, it was when we were discussing there—I can't set any particular date in regards to that on account we discussed the timber matters and claims that they had and claims that I had very frequently. It was a common occurrence to us to discuss those.

Q. You can't recall any particular conversation you had regarding the Del. Maris claim, can you?

A. No, I don't know as I can tell any particular conversation any more than it was brought up and discussed, and discussed along with other claims, and perhaps discussed separately.

Q. But you have no distinct recollection about it, have you? A. Why, not particularly so.

Q. I will ask you, Mr. Robnett, if that is your signature to that affidavit. (Showing witness document.) A. Yes, sir.

Q. You swore to that, did you? [2232—1902]

A. I did.

Q. And is that affidavit true or false?

(Testimony of C. W. Robnett.)

A. I don't know now just what the conditions in that affidavit is, but at the time it was made you was my attorney in the timber matters and also in the bank matter.

Q. I will read it to you and see whether or not it is true or false:

[Defendants' Exhibit A-1.]

“State of Idaho,
County of Nez Perce,—ss.

Clarence W. Robnett, being duly sworn, upon oath says, that he is personally acquainted with Carrie D. Maris who made application for the purchase of the Southeast quarter of the Southwest quarter of Section 12, the East half of the Northwest quarter, and the Northeast quarter of the Southwest quarter of Section 13, Township 36 North of Range 5 East, Boise Meridian, which application bears date November 21, 1902;

That a short time prior to the making of said application the said Carrie D. Maris was clerking in the store of John P. Vollmer in Lewiston, Nez Perce County, Idaho; that she came to affiant and asked affiant if he could find her a timber claim so that she could make application for and protect her title; that affiant stated to the said Carrie D. Maris that he would do the best he could for her; that the said Carrie D. Maris stated to affiant that she was compelled to assist in the support of the family, and the wages she was receiving were so small that it was very hard for her to properly support and maintain herself and the family, and that if she could procure

a timber claim she would feel very grateful to affiant for his efforts in her behalf; [2233—1903]

That affiant called on J. C. Jensen, who was engaged in the location of parties on timber claims, and asked the said J. C. Jensen if he had a timber claim upon which he could locate the said Carrie D. Maris; that the said J. C. Jensen stated to affiant that he had a good timber claim and would locate the said Carrie D. Maris thereupon for a fee of one hundred (\$100) dollars;

That affiant then called on the said Carrie D. Maris and stated to the said Carrie D. Maris that the said J. C. Jensen had a timber claim upon which he would locate her for a location fee of one hundred (\$100) Dollars;

That the said Carrie D. Maris stated to affiant she did not have the money to pay the location fee or to purchase the land, and asked affiant if he would aid her in procuring the money; that affiant stated to the said Carrie D. Maris that he would do the best he could for her;

That subsequently the said Carrie D. Maris in company with the said J. C. Jensen started to the timber, and as affiant is informed and believes made an examination of the land, subsequently returned and filed her application for the said tract on November 21, 1902;

That about the time the said Carrie D. Maris was to make final proof, she called upon affiant and stated she did not have the money with which to pay for the land;

That affiant called on Mary L. Sullivan, who resides in Lewiston, Nez Perce County, Idaho, and

asked the said Mary L. Sullivan if she could loan the said Carrie D. Maris the necessary money with which to purchase the land, and pay the location fee; that the said Mary L. Sullivan promised to make the loan of money, and did advance the same; [2234—1904]

That after the said Carrie D. Maris made her final proof, she made many efforts to dispose of the land, and employed J. C. Jensen to find a purchaser therefor; and also other parties whose names affiant cannot at this time remember; and after she had held the land for about one year she stated to affiant that she desired to get married, and needed some money with which to purchase necessary clothing for the occasion; that she would sell the claim very reasonable if a purchaser could be found, and asked affiant if he could not assist her in finding a purchaser for the same;

That affiant went to see J. M. Malloy, and partially arranged for the sale of the land to the said J. M. Malloy, and as the said Carrie D. Maris was getting very anxious to make a sale, and to procure the money, affiant called on Geo. H. Kester and W. F. Kettenbach, and endeavored to make a sale to the said Kester and Kettenbach;

That the said Geo. H. Kester stated to affiant that he would have the land examined, and if it was a good piece of land and contained timber as represented, he would purchase the same;

That subsequently the said Geo. H. Kester stated to affiant that he had made an examination of the land, and would purchase the same, and that a sale was made to the said Geo. H. Kester and W. F.

Kettenbach for the sum of sixteen hundred dollars, (\$1600);

That affiant had no agreement with the said Carrie D. Maris to purchase the land prior to the making of her final proof, and never did purchase the land from the said Carrie D. Maris;

That the said Geo. H. Kester and W. F. Kettenbach knew nothing about the land, or the acquiring of the same by the said Carrie D. Maris for more than a year after final proof was made, and it was only a very short time after affiant opened negotiations with the said Geo. H. Kester and W. F. Kettenbach for the purchase of the land before the sale was made; [2235—1905]

That no agreement of any kind or nature existed between affiant and the said Geo. H. Kester and W. F. Kettenbach, or between affiant and the said Carry D. Maris for the purchase of the land prior to the time the sworn statement was filed, or prior to the time final proof was made, and no agreement of any kind or nature ever existed between the said Geo. H. Kester and W. F. Kettenbach and the said Carrie D. Maris to the knowledge of affiant prior to the time final proof was made for said tract.

C. W. ROBNETT.

Subscribed and sworn to before me this 1st day of July, A. D. 1909.

SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State of Idaho."

Was that affidavit true or false?

A. What was the date of it?

(Testimony of C. W. Robnett.)

Q. The first of July, 1909.

A. The affidavit was false where it conflicts with the statements made in the testimony here.

Q. In the main then it is false? That is, where you swear there that you had no prior agreement with Carrie D. Maris and had no agreement with Kester and Kettenbach to sell the land to them, the affidavit is false, is it? A. Yes, sir.

Mr. TANNAHILL.—I ask that the affidavit be marked as a proper exhibit, and introduce it in evidence.

Said affidavit was thereupon marked by the stenographer as Defendants' Exhibit "A-1."

Q. Now, you say you had a similar agreement with Joel H. Benton? A. Yes, sir. [2236—1906]

Q. And Johnny Little?

A. Yes, sir; that is, the arrangements were not—not similar arrangements with John H. Little. The arrangements in regards to Mr. Benton was on an equal division of the profits of the claim.

Q. Now, what was the talk you had with Johnny Little regarding this matter?

A. That I was getting up a bunch of claims to be sold to some parties, and that I could get him from \$150.00 to \$200.00 out of his claim if he wanted to take up a timber claim.

Q. Who were the parties that you were gathering up this bunch of claims to sell to, who were you to sell to?

A. Mr. Deary told me that the Potlatch Lumber Company —

(Testimony of C. W. Robnett.)

Q. You had tried to sell these claims to various people before you finally sold them to Kester and Kettenbach, had you not?

A. Yes; a number of deals were on for those claims.

Q. And you had arranged to get the money from other parties for the payment of the purchase price, had you not?

A. That is, a portion of them, yes; in fact most all of them.

Q. And you finally fell down on getting the money from other parties, did you not—Curtis Thatcher, for instance?

A. Mr. Curtis Thatcher made arrangements to take up some loans.

Q. Then, you went to Mr. Kettenbach and arranged with him to furnish the money?

A. I told him Mr. Thatcher had fallen down, and I told him the conditions, which he already knew, and he said he would go ahead and take up those which Mr. Thatcher was unable to take care of.

Q. And the arrangements with Mr. Kettenbach was made after the people had filed on the land and just prior to making final proof? A. Yes, sir.

Q. And he told you to take a mortgage in your own name and [2237—1907] assign the mortgage to him?

A. Not to assign the mortgage; to take the mortgage in my own name, but to assign the note over to him without recourse.

Q. You understand that the assignment of a note in Idaho carries with it the mortgage?

(Testimony of C. W. Robnett.)

A. Yes, sir.

Q. And you carried it out in that way?

A. Yes, sir.

Q. You had no agreement with Mr. Kettenbach to furnish the money for these claims prior to the time they was filed on, did you?

A. Not particularly these claims, but Mr. Kettenbach told me any time he could help me out, that I needed any assistance in any transactions I was in, why—

Q. You had similar arrangements as to the Varney claim, did you?

A. I didn't locate Mr. Varney.

Q. What was your arrangements with Varney?

A. I paid Mr. Varney \$15.00 a claim for everyone that he brought to me that was located.

Q. Well, now, then, did you make Curtis Thatcher acquainted with your arrangements with these people?

A. With the fact that I was entering the claims and expected to dispose of them to this party, the Potlatch Lumber Company, that I was working a deal and getting the claims up in a bunch.

Q. You didn't tell him you had any illegal agreement with them, did you?

A. I told him I was to handle the claims, and that they were to go ahead and I was to arrange for the money and the location fee, and they were to give a mortgage until the claims were sold.

Q. Did you make the same statement to him, the same as you did [2238—1908] to Mr. Kettenbach?

(Testimony of C. W. Robnett.)

A. I don't know as I stated just what I was to get out of the proposition; I told him I was to go ahead and the claims were to be bunched, and I was to sell them, and that the deal would go through, I thought the deal would go through, whereby he would get his money out of there in a short time after proof, and get his \$200.00 bonus for making the loan.

Q. And you told him then that you had arrangements to sell the land?

A. Yes, that I was working on a deal to dispose of all this timber shortly after proof could be made, or as soon as it was cruised, and that Mr. Dreary thought the cruisers would be in there that summer.

Q. Did you get any part of the location fee?

A. I got one-third of the location fee.

Q. In all of these claims? A. Yes, sir.

Q. And you got that out of these claims when they were sold, or when the mortgage was given? That was added to the amount, was it?

A. Yes, the \$125.00; some of the notes were \$125.00 and some \$150.00.

Q. Now, who is this man Varney, Arthur Varney?

A. He was a party there living in Lewiston.

Q. Where is he now? A. I do not know.

Q. Where was he when you last heard of him?

A. In North Yakima.

Q. What is his occupation? A. At that time?

Q. Yes.

A. He was working with a surveying crew.

Q. Who is this man George Morrison? [2239—1909]

A. He was one of the parties that located, and was

(Testimony of C. W. Robnett.)

working there in Lewiston, and left the next day or two after he made proof.

Q. Where did he go?

A. Why, to Portland, I believe.

Q. Where did you last hear of him?

A. Portland.

Q. What was his occupation?

A. Why, he was either a carpenter or a painter.

Q. What kind of a looking man was he?

A. He was perhaps about five feet six in height, and rather slender and dark complected. That is my recollection of him.

Q. Did he wear a moustache?

A. I think he did.

Q. Who was Wren Pierce?

A. Wren Pierce, he was a friend of Mr. Morrison's, there in Lewiston; they were one of the parties secured by Mr. Varney.

Q. Where did you last hear of him?

A. I don't remember.

Q. Do you know that Johnny Little testified that he had no prior agreement with you of any kind or nature?

A. No, I don't know what Johnny Little's testimony was.

Q. Now, you say you had a prior agreement with Benjamin F. Bashor? A. Yes, sir.

Q. What was your agreement with him?

A. That he was to go ahead and prove up on the claim, and I was to handle it and dispose of it in this bunch of claims that I was bunching together to sell, and he was to receive so much of the selling price.

(Testimony of C. W. Robnett.)

Q. Who was you going to get the money from for him to prove up?

A. Why, I don't know as I made arrangements to get the money from anybody except Mr. Kettenbach. [2240—1910]

Q. You made the arrangements to get the money from Mr. Kettenbach immediately before the final proof was made, didn't you?

A. I made the arrangements in plenty of time; I don't know just when it was. I knew I could get the money.

Q. It was after he filed on the land, wasn't it?

A. Perhaps; I wouldn't be positive, but I think it was.

Q. You made the arrangements for Mr. Kettenbach to furnish the money for Morrison and Pierce immediately before final proof, didn't you?

A. Yes; those were the ones Mr. Thatcher was to take care of.

Q. And Mr. Kettenbach knew nothing about the transaction until immediately before they made final proof?

A. Yes, he did; he knew about it before, that I made arrangements with Curtis Thatcher to get the money.

Q. How did he know it?

A. On account I told him.

Q. When did that conversation take place?

A. It took place when I spoke to Mr. Thatcher about getting money on these timber claims. I told Mr. Kettenbach I was getting the money on these—

(Testimony of C. W. Robnett.)

Mr. Thatcher made a number of loans, that is, ten, before Mr. Kettenbach took it up, agreed to take it up, but he made a number of them.

Q. Did you tell Mr. Thatcher about your arrangements to sell these claims too after final proof was made? A. Yes, sir.

Q. Did you tell Kettenbach about your arrangements to sell the claims after final proof was made?

A. Yes, I told him about it; he knew about it when we went over to Moscow and seen Mr. Deary. I went over there prior to the time we started in on this locating in 39-3.

Q. Had you located these people then?

A. No. I had the arrangements made with Mr. Deary before that [2241—1911] time, a representative of the Potlatch Lumber Company.

Q. I want to know when you had your first talk with Mr. Kettenbach about these particular men you had located there about their claims?

A. I was going ahead—Kettenbach knew all about the particular—

Q. Now, Clarence, I am asking for the conversation—not your conclusion about it. If you will just give the conversation we will get along a great deal faster.

A. I went to Mr. Kettenbach and was talking to him, and he says, “What is Mr. Benton and Mr. Knight doing in cruising the timber?” And I told him they were working in 39-3, and I says, “They are cruising out a certain number of claims in that country—fifteen—or a number of claims to locate.”

(Testimony of C. W. Robnett.)

and I told him I had spoken to Curtis Thatcher—

Q. I want to know the first conversation you had with Kettenbach about it, and all that was said in that conversation.

A. Well, at the time they was working there cruising out the timber—I guess the first conversation in regards to what we was going to do in 39-3 was after Mr. Joel H. Benton and W. B. Benton was locating in 39-3.

Q. I am asking you about these particular entry-men, Morrison and Pierce.

A. Well, I am going to get to that. He says, “Is there any more claims up there? Is those the only two there is going to be there?” And I says, “Mr. Billy Benton says there are a great many other claims in there, and we are going to locate that in there, so that there will be quite a little body of claims in there,” and so told him after we cruised it out and before we got those claims cruised out we had other claims that Curtis Thatcher made loans on that we located, and I also told him that I thought I could make arrangements with Curtis Thatcher [2242—1912] for the money for the final proofs on those claims through there, and he said “go ahead and make all the arrangements,” and we often talked about the conditions and how everything was going.

Q. I want to know just what was said between you and Mr. Kettenbach.

A. He wanted to know how—well, that was when we started in there, before we made the location, while they was cruising that timber out and before we started to make the location, I went to Moscow,

(Testimony of C. W. Robnett.)

and I told him I was going up to Moscow and I was going to see what the Potlatch Lumber Company was going to do in regards to entering this field, and he said, "All right; find out about it," and when I came back I told him.

Q. Now, you haven't told me a thing that was said between you?

A. And he said he hoped that I would make everything go through and I told him that—he wanted to know what kind of arrangements I was going to make with the entrymen, and I told him I wasn't going to locate anybody in there but what was willing to take a certain amount for their right and would agree to let me sell the claims, so that I could bunch them up and have a body of claims there to sell to the Potlatch Lumber Company in case they went into that field, which I thought they would go into in August or September to cruise the timber.

Q. Where did that conversation take place?

A. In the Lewiston National Bank.

Q. What part of the bank?

A. It might have taken place in the directors' room or it might have taken place in the main body of the bank.

Q. You have no distinct recollection where it did take place, have you? [2243—1913]

A. No; I know it took place there in the bank some time when I was talking to Mr. Kettenbach.

Q. You have no distinct recollection of the conversation, have you? You recollect it simply as your general talk, don't you?

(Testimony of C. W. Robnett.)

A. No; I have a distinct recollection of this conversation taking place and what was said at this conversation, but just what part of the bank it took place in I do not recall.

Q. That is all the conversation you remember that was had between you, that was all that was said in that conversation, was it?

A. No, that is all I recall at the present time in the conversation, but there was other different conversations took place.

Q. Well, what was the next conversation in regard to this Morrison and Pierce claim?

A. Well, after I went and saw Mr. Thatcher and made arrangements for him to take care of ten claims in there, I told Mr. Kettenbach of the arrangements and just what the conditions were going to be, and he said that was all right. Then, later on, after the filing had taken place, Mr. Thatcher told me that he would be unable to take care of those loans, so I went and saw Mr. Kettenbach about it, and he said he would take care of them.

Q. That was the first time the Morrison and Pierce claims was mentioned between you and Mr. Kettenbach, was it?

A. That is, the names of the entrymen, yes, sir.

Q. And the descriptions of the land?

A. That is, the general location in which they were cruising, in 39-3.

Q. I say, that is the first time the description of the land was mentioned to Mr. Kettenbach, in relation to the entrymen, that is, that these entrymen were filing

(Testimony of C. W. Robnett.)

on certain lands, the description of the lands?
[2244—1914]

A. Why, no, I don't know but what the names of the entrymen after the filing was mentioned; he asked me how many people I had, and I had a little book that I kept the filing notices of the people I located in so as to keep tab so that when the proof was made—

Q. You have no distinct recollection of any conversation you had with Mr. Kettenbach after this conversation you have testified to, except the conversation after Curtis Thatcher was unable to furnish the money?

A. That is perhaps the first time I took these matters up with him and went into details with regards to these particular claims.

Q. And that was immediately before they made final proof?

A. A short time; perhaps thirty days or such a matter.

Q. And you had no arrangements with Kettenbach then to sell him the claims, did you?

A. No more than in a general way that any claims I had control of if they wanted them they could have them.

Q. But you had no arrangement or understanding—

A. I didn't know as he particularly wanted those claims at that time.

Q. And you had no arrangements with him to buy the claims for two years afterwards, did you—a year

(Testimony of C. W. Robnett.)

or so after they made final proof?

A. What do you mean?

Q. He bought the Pierce claim afterwards, didn't he? A. Yes.

Q. How long afterwards?

A. There was two of the claims there that he bought right at the time of the proof.

Q. Well, that was arranged then—they sold the claims instead of giving a mortgage; is that right? [2245—1915]

A. Yes. That was according to the entryman. If I could buy them at \$200.00 or \$150.00, whatever it happened to be to those particular entrymen at the time of the proof, they were to deed to whomever I stated and receive their money, or otherwise, if the deal wasn't in shape to close, they would wait and give a mortgage, and wait until I got the deals ready to close.

Q. There was nothing said to Mr. Kettenbach about buying those claims until about the time they made proof, was there?

A. Nothing more than the general arrangements.

Q. I am not asking you now for your general conversations, or anything of that kind. I am asking you about your conversations about these particular claims.

A. Well, I told Mr. Kettenbach that these claims were to be put in a bunch of claims to be sold to the Potlatch Lumber Company; that was what I was getting them up for.

Q. Well, but now then you say that after that,

(Testimony of C. W. Robnett.)

about the time they made final proof, two of them concluded to sell, to deed their claims instead of giving a mortgage? A. Yes, sir.

Q. They concluded to do that about the time they made final proof? A. Yes.

Q. And Mr. Kettenbach agreed to buy them about the time they made final proof?

A. He agreed to buy them instead of taking a mortgage under the arrangements I had made with these parties.

Q. And that was the arrangement you made with Kettenbach?

A. Yes; I went to him and stated that these parties would prefer to sell their claims for \$200.00 outright.

Q. When was that now? [2246—1916]

A. That was relative to the time of the proof, that is, my conversation in regards to these parties wanting to sell to Mr. Kettenbach.

Q. And after they had filed? A. Yes, sir.

Q. Was it after they had made final proof?

A. No; it was just prior to the time they made final proof.

Q. How long prior?

A. Why, perhaps the same day, or the day before, that they made the statement that they wanted to sell, that they were going away and not wait for me to carry his deal through.

Q. One of those was the Morrison claim, was it?

A. Yes, sir.

Q. And the other one was the Pierce claim, or do you remember?

(Testimony of C. W. Robnett.)

A. I think it was another one of the parties there; I think Pierce gave a mortgage.

Q. Wasn't the other the Hyde claim?

A. The Hyde claim.

Q. What did Kester and Kettenbach give for the Morrison claim? A. \$200.00.

Q. What was the full amount they paid for it?

A. They paid the note, the location fee, and the expenses at the land office, proving up money, and the \$200.00.

Q. Didn't they give a check for that claim when proof was made?

A. No, they didn't give a—

Q. They gave a check for each claim at the time they were purchased, didn't they?

A. No; the money—I took the money and paid it out and made a cash item there for it, and, of course, the cash items was taken up out of the cash by giving checks for them. [2247—1917]

Q. Will you swear that Kester and Kettenbach didn't give a check for each one of those claims for a certain amount?

A. Well, it is not my recollection that they did,—that the money was handled just the same way that the other money was advanced for the proof.

Q. You are sure of that, are you?

A. Yes, sir; I feel very confident that is the way it was handled.

Q. Isn't it a fact that the entrymen were paid \$800.00 apiece for these claims, either paid to them or paid to you for them, and you made the deal for them?

(Testimony of C. W. Robnett.)

A. Why, it might have amounted up to practically \$800.00, on account of \$400.00 and \$150.00 and the \$200.00 paid, would amount to \$750.00, and there was interest on that \$150.00 for the ninety days, and there may have been some expenses added for going up to the timber, which would bring it practically to \$800.00; but the money was advanced to them to go to the land office and make proof, and when they came back they deeded it over and got \$200.00.

Q. Kester and Kettenbach didn't advance any money to go to the land office and file or pay any expenses up to the timber, did they?

A. I took the money out of the cash and made cash item slips for the money as I took it out, for the different entrymen to go up to the land office to make proof—

Q. I am talking about the expenses up to the land, and the filing fees.

A. I say if the total amount come up to \$800.00 they must have advanced the money they had paid out for the expenses up to the timber.

Q. Didn't you bring those two men in to Kester and Kettenbach in the bank and close the deal with them there, in the presence of those two men, and in the presence of Kester and Kettenbach? [2248—1918]

A. No, sir; I did not; I had nothing to do with Mr. Kester in regards to these two claims; it was all with Mr. Kettenbach.

Q. Didn't you bring them in through the directors' room into the main body of the bank building and to

(Testimony of C. W. Robnett.)

the door of Billy Kettenbach's private office?

A. No, sir; I did not.

Q. Right alongside of Mr. Kester's desk?

A. No, sir; I did not. I had those parties in the directors' room, and he didn't meet the parties at all; he made all the arrangements with me.

Q. And you didn't bring them into Frank Kettenbach's private office?

A. No, sir; the arrangements were made with Mr. Kettenbach—

Q. You are positive of that, are you?

A. I know it; yes, sir.

Q. Mr. Robnett, when did you first tell Mr. Kettenbach or Kester about your arrangements with Mr. Bashor?

A. Why, whenever I asked Mr. Kettenbach to advance the money.

Q. When, in relation to the time, he had made his filing? Or made his final proof?

A. In regards to the Bashor claim, I think that I made the arrangements with Mr. Bashor and was going to take the claim up myself.

Q. You were going to take it up yourself?

A. Yes, and pay him the amount at the time, if the other deal didn't go through, and advance him the money, but certain locations didn't come in and a certain amount of money I was figuring on coming in didn't come, so I told Mr. Kettenbach the conditions of the claim, and what I had agreed with Mr. Bashor, and I wanted him to advance the money for the final proof, and he said he would. [2249—1919]

(Testimony of C. W. Robnett.)

Q. When was that, in relation to the time he made final proof?

A. Perhaps about thirty days, and yet it might not have been quite that long, but it was some little time before final proof?

Q. It was after he filed? A. Yes, sir.

Q. And you asked Kettenbach to advance the money, to loan the money to make final proof?

A. Yes, sir.

Q. And Bashor would give a mortgage for it?

A. Yes, sir.

Q. And Kettenbach did loan the money to make final proof? A. Yes, sir.

Q. And you took a mortgage in your own name?

A. Yes, sir.

Q. And endorsed the note over to Kettenbach?

A. Yes, sir.

Q. And you don't know whether it was just a day or two before final proof or a week or two weeks, do you?

A. Why, some little time; I wouldn't have waited to mention that matter to him till just a day or two before final proof.

Q. When was the first conversation you had with Kettenbach about buying the Bashor claim?

A. It was Mr. Kester that spoke to me to write to Mr. Bashor and find out what he would sell his claim for or to make him a certain offer,—I don't recall now just what it was,—and I either wrote Mr. Bashor to call at the bank,—I think to call and see me when he came to town; and he called in and we went

(Testimony of C. W. Robnett.)

into the directors' room and talked the matter over, and he agreed to make a certain price and make out a deed.

Q. How long was that after final proof was made?
[2250—1920]

A. It was some little time—perhaps a couple of years.

Q. With the exception of the Hyde and Morrison claims, there was really no negotiations for the sale of these claims to Kester and Kettenbach for something like two years after final proof was made, was there?

A. No, I don't know, for them to take them up, that there was any particular negotiation, any more than was specified before.

Q. You said you had some arrangements with the Longs. When did you first speak to Mr. Kettenbach—or who was you to get the money from for the Longs, first? A. Curtis Thatcher.

Q. When did you first speak to Kettenbach about furnishing it?

A. The same time; they were among that bunch of ten.

Q. When did you first speak to Kettenbach about buying the Long claims?

A. It was after proof had been made some time; a short time before—

Q. When was the first conversation you had with Kettenbach regarding the Long claims?

A. Why, the mortgages had been due perhaps six months, maybe close on to a year, and Mr. Kettenbach

(Testimony of C. W. Robnett.)

and I were talking the matter over in regards to those loans, and I asked him what he thought about buying them, closing them out that way, and he said, "See what they will take," so I had Mr. John Long come in and see Mr. Kettenbach and have a talk with him in regards to selling those claims.

Q. It was about six months or a year after they gave the mortgage?

A. It was after the mortgage came due, I think.

Q. Then it was a year and a half after final proof was made?

A. Something in that neighborhood. [2251—1921]

Q. That was the first conversation you had with Kettenbach about purchasing the claims, was it?

A. Yes, him buying them outright, yes.

Q. That related to all of the Long claims?

A. Yes, sir.

Q. You say you had some arrangements with Ferris and Robinson. When did you first speak to Kettenbach about these claims?

A. The same time I spoke about the other bunch; they were in that first bunch of ten.

Q. When did you first speak to him about furnishing the money for these claims, in relation to the time they made final proof?

A. The same time I spoke about the others, the same ten there.

Q. Just about the time they made final proof?

A. No; it was quite a little while before.

Q. It was after that they filed? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. And you expected to get the money from Curtis Thatcher for these claims? A. Yes, sir.

Q. And you arranged with Mr. Kettenbach to loan the money to make final proof? A. Yes, sir.

Q. There was no arrangements at that time that he was to buy the claims?

A. No, he wasn't under any obligation.

Q. When was the first talk about his buying the claims?

A. After the mortgages came due, after all the other deals had fell through.

Q. Something like a year and a half after the mortgages were given, and they had made final proof? [2252—1922] A. Yes, sir.

Q. And you had tried to sell them to various parties in the meantime, had you not?

A. Why, yes, there was several deals on; there was a deal on at the time the claims were located.

Q. Well, you tried to sell them to various parties after final proof?

A. Yes, I had several deals on; also those deals included other claims.

Q. When did you first speak to Kettenbach about furnishing the money for the Clute claim, Joseph B. Clute? A. I had nothing to do with that claim.

Q. Do you know anything about it?

A. I think that is one of the Colby and Emory claims.

Q. When did you first speak to Kettenbach about furnishing the money for the Drury M. Gammon claim?

(Testimony of C. W. Robnett.)

A. I didn't speak to Mr. Kettenbach about that.

Q. How did you get the money?

A. I spoke to Mr. Kester about that.

Q. When did you first speak to him about it?

A. A short time before the proof.

Q. About how long before the final proof?

A. Perhaps a couple of weeks.

Q. What did you tell him?

A. I told him the arrangements under which I had the claim, and that I was to pay—

Q. Just state what you told him.

A. I went into the directors' room and I told him, I says, "George, Charlie Washburn and I have located Drury Gammon on a claim up here, and we are to give him \$350.00, and he is to deed it over, [2253—1923] and I would like for you to go ahead and make—advance the money for the final proof and take a mortgage, and I will pay Mr. Gammon the money I promised him, and then he will deed the claim to me, and when the claim is sold I will take up the mortgage."

Q. What did Kester say?

A. He said that was all right, to make the loan, and have Mr. Gammon come in and make a mortgage after final proof.

Q. How long did that mortgage run after final proof, after Gammon had deeded the claim, before it was paid?

A. The mortgage wasn't paid until I deeded the claim over to the Lewiston National Bank.

Q. Don't you remember that Mr. Kester notified

(Testimony of C. W. Robnett.)

Gammon to come in and pay that mortgage, and that Gammon told him that he had sold the claim to you, and that you was to take care of that mortgage, and Gammon told you about it, and you asked him if he had said anything to Kester about it, and he said yes, he started to, and said something to him, and you said, "I am sorry you did that; I didn't want him to know anything about that," or words to that effect?

A. No, I don't have any recollection of any such conversation taking place at all, on account the note lay there in among the notes. He might have notified Mr. Gammon; I don't know anything about that, forgetting about the transaction there, but on account I held the deed to the claim shortly after the proof, and he knew it.

Q. Didn't Gammon pay the interest to the bank on that note at one time?

A. No, I don't think he did. No; I know he never paid the interest. I paid the interest.

Q. I will ask you, Mr. Robnett, if you didn't pay some money to Gammon to come in and pay the interest on that note with?

A. No, I don't know as I did. I don't—in fact, I am positive I didn't. [2254—1924]

Q. Will you swear that you didn't?

A. I am positive that I didn't do anything of the kind.

Q. I will ask you, Mr. Robnett, if, on the street in Lewiston, if Gammon didn't go to you, say to you, some time after you had taken a deed from Gammon to this land, this conversation occurring in Lewiston, Nez Perce County, State of Idaho, yourself and

(Testimony of C. W. Robnett.)

Drury M. Gammon and none others being present, that "Kester has notified me to come in and pay that note and mortgage. How about it?" To which you replied: "Did you say anything to Kester about it?" To which Gammon replied: "Well, I did some; I started to and then quit," or words to that effect. And did you not state to Gammon at that time, "I am sorry you said anything to Kester about it; I didn't want him to know anything about it," or words in substance and to that effect?

A. No; that conversation never took place.

Q. Did anything like it take place? A. No, sir.

Q. Nothing of the kind? A. No, sir.

Q. You say you had some arrangement with John E. Nelson about a claim? A. Yes, sir.

Q. When did you first speak to Kester and Kettenbach about your arrangement with Nelson about his claim?

A. Curtis Thatcher loaned the money on that; I spoke to them about it along in a general way, talking about other claims.

Q. Did you speak to Thatcher about the arrangements you had with Nelson?

A. That Nelson was to go ahead and prove up on the claim and that I was to have it and sell it along with that other bunch, and that I was to have the handling and selling of the claim, yes, sir. [2255—1925]

Q. You told Curtis Thatcher that, did you?

A. Yes, sir.

Q. And he furnished the money for that claim, did

(Testimony of C. W. Robnett.)

he? A. Yes, sir.

Q. Kester and Kettenbach had nothing to do with it?

A. No, they had nothing to do with that claim.

Q. Now, did Kester and Kettenbach have anything to do with the Waldman claim?

A. Robert B. Waldman?

Q. Yes.

A. That was a claim that I made arrangements with Mr. Waldman to pay him \$400.00 for his claim, and finally paid him \$375.00, and took a deed to his claim.

Q. When did you first have any negotiations with Kester and Kettenbach about this claim?

A. That claim was deeded to the Lewiston National Bank when Mr. Frank Kettenbach was—

Q. You had no conversation with Kester and Kettenbach about it at all then?

A. Yes, I had conversations with him about those two claims I had up there in 38—I think it was 38 in 2, right close to where their State land was, and about the timber on there, and how there could be a flume put in there and it could be logged down to the Clearwater, and what could be made off of it from the cord wood and the tie timber, and so forth, and under what conditions I got that; there was two claims there together.

Q. And you told Frank Kettenbach about your arrangements with the entrymen, did you?

A. I did.

Q. Now, Mr. Robnett, you testified to a deposit

(Testimony of C. W. Robnett.)

box that was in the [2256—1926] Lewiston National Bank that you had demanded, and named a certain draft that was in the deposit-box?

A. No, I guess not.

Q. Is it not a fact that you testified before the grand jury concerning a certain draft that was in that deposit-box, for \$5,000.00, and that you did not claim your privilege before the grand jury when you testified?

A. I decline to make any statements, in regards to what I testified before the grand jury.

Q. Did you claim your privilege when you testified before the grand jury?

A. I decline to make any statements.

Q. For what reason do you decline to make any statement as to whether or not you claimed your privilege before the grand jury?

A. That matter is before the grand jury, and private, what took place there is supposed not to be divulged.

Q. I am not asking you now about what you testified to before the grand jury, but I am asking you if you claimed your privilege when you appeared before the grand jury.

A. I decline to make any statements in regard to what took place before the grand jury.

Q. And you testified before the grand jury concerning some of the matters you testified about here? A. I decline to make any statement.

Q. You testified before the grand jury concerning the Steffey account, did you not?

(Testimony of C. W. Robnett.)

A. I decline to make any statement.

Q. And you did not claim your privilege in regard to that?

A. I decline to make any statement. [2257—1927]

Q. You testified before the grand jury concerning the Kittie E. Dwyer account?

A. I decline to make any statement.

Q. Did you claim your privilege when you testified before the grand jury regarding this account?

A. I decline to make any statement.

Q. You testified before the grand jury concerning the William Dwyer account, did you not?

A. I decline to make any statement.

Q. And did you claim your privilege when you testified before the grand jury concerning these matters? A. I decline to make any statement.

Q. You testified before the grand jury concerning the Kester and Kettenbach timber account?

A. I decline to make any statement.

Q. Did you claim your privilege when you testified concerning that account?

A. I decline to make any statement.

Q. You testified before the grand jury concerning this deposit-box, did you not?

A. I decline to make any statement.

Q. Did you claim your privilege when you testified before the grand jury concerning that box and its contents and your efforts to get that box?

A. I decline to make any statement.

Q. You say that Mr. Steffey's checks were hon-

(Testimony of C. W. Robnett.)

ored when they came into the bank. They were charged up to his account, were they not?

A. Yes, sir; whether the money was there or not, or whether it made an overdraft.

Q. You had an overdraft there too at times, did you not? [2258—1928]

A. I did; I had the use of money by overdraft.

Q. And you drew money when it wasn't placed in the nature of an overdraft, didn't you?

A. I decline to answer.

Q. Did you decline to answer that question when you appeared before the grand jury and testified before the grand jury?

A. I decline to make any statement.

Q. For what reason do you decline to make any statement?

A. Matters that I testified to before the grand jury is private for the grand jury, not privileged matter.

Q. Mr. Robnett, you testified in the case of the United States against William F. Kettenbach, George H. Kester and William Dwyer, did you not, case No. 1605, in the months of May and June, 1907, charged with conspiracy, in which these lands involved in this proceeding were involved, or some of the lands involved in this proceeding were involved, did you not? A. Yes, sir.

Q. I will ask you if at that time you testified as follows:

“Q. Can you tell us how many claims you own in the Clearwater country? A. Eight claims.

(Testimony of C. W. Robnett.)

“Q. At how much each?

“A. Well, I think with the exception of one they are all full claims of 160 acres each.

“Q. Of 160 acres each? A. Yes, sir.

“Q. Tell us, Mr. Robnett, whether or not Kester or Kettenbach have any interest in those lands?

“A. They have not.”

Do you remember so testifying? [2259—1929]

A. I do.

Q. Was that testimony true or false?

A. It was false, portions of it.

Q. Did you know it was false at the time?

A. I did.

Q. (Reading:)

“Q. Tell us whether or not Mr. Dwyer has any interest in those lands? A. He has not.

“Q. Tell us whether or not Mr. Dwyer had any connection or rendered you any assistance in acquiring title to any part of those lands?

“A. No, sir, he did not.”

Were those answers true or false, in regard to Mr. Dwyer?

A. In regards to Mr. Dwyer on the arrangements I did have.

Q. Just answer whether it was true or false.

A. It was false.

Q. You knew it was false at the time, did you?

A. Yes, sir.

Q. (Reading:)

“Q. Tell us whether or not Mr. George H. Kester at any time had any connection with your acquiring

(Testimony of C. W. Robnett.)

title to those lands or any part of them.

“A. He did not.

“Q. Do you know of your own knowledge that Mr. Kester individually or Mr. Kettenbach individually, or the two gentlemen as Kester and Kettenbach own any timber lands in this same section of the country?

“A. I think they do; yes, sir. [2260—1930]

“Q. Tell us whether or not you had any interest in any lands owned by Kester and Kettenbach or by William F. Kettenbach individually, or George H. Kester, individually? A. No, sir, I have not.”

You so testified, did you?

A. Yes, sir.

Q. Was that answer true or false? A. False.

Q. You knew it was false at the time, did you?

A. Yes, sir.

Q. (Reading:)

“Q. Do you know whether or not the Lewiston National Bank owns any timber lands in that country? A. Yes, sir; it does.

“Q. Tell us whether or not you have any interest of any kind or nature in any of the lands owned by the Lewiston National Bank? A. No, sir.

“Q. Tell us whether or not you have ever at any time been connected with William Dwyer in the acquisition by either yourself or Mr. Dwyer of title to any timber lands in this section of the country or elsewhere? A. No, sir.

“Q. Tell us whether or not you had any connection with George H. Kester in the acquisition of title

(Testimony of C. W. Robnett.)

to land in this section of the country or elsewhere, by you or by George H. Kester? A. No, sir.

“Q. Tell us whether or not you have had any connection with the acquisition of any timber lands in this section of the country, that is the Clearwater country, the North Fork of the Clearwater country, [2261—1931] or the Clearwater country east of Lewiston that has been acquired by the defendant W. F. Kettenbach??

“A. Well, what do you mean in regard to loans and so forth?

“Q. No, have you been connected with this acquisition of title to the property?

“A. No, sir, unless it be in the form of a loan.

“Q. Has he been connected with any transaction by which you have acquired title to property or to lands in any of this section of the country?

“A. No, sir.”

You so testified, did you?

A. Yes, sir.

Q. Was that true or false? A. False.

Q. You knew it was false at the time, did you?

A. Yes, sir.

Q. Did you also testify:

“Q. Have you been connected with any transaction relating to the acquisition of title and by that I mean the conveyance which conveys the title, not mortgages or loans, or anything of that kind, but have you been connected with any transaction by which or through which Mr. Kester and Mr. Kettenbach have acquired title to any lands in this section

(Testimony of C. W. Robnett.)

of country, standing in the name of or owned by George H. Kester and W. F. Kettenbach?

“A. No, sir.

“Q. Mr. Robnett, I will ask you the general question. Have you ever entered into any arrangement, any agreement, any understanding, any conspiracy, or any combination with the defendant William Dwyer, or the defendant George H. Kester or the defendant W. F. Kettenbach, whereby you should acquire or were to acquire title to [2262—1932] Government lands through any connection with the entrymen for the land? A. No, sir.”

You so testified, did you?

A. Yes, sir.

Q. Were those answers true or false?

A. False.

Q. You knew they were false at the time, did you?

A. Yes, sir.

Q. (Reading:)

“Q. Mr. Robnett, how did you first become interested in the acquisition of timber lands in this section of the country?

“A. By hearing about the timber lands first around Moscow and then on down through Lewiston.

“Q. I refer more particularly, Mr. Robnett, to your action or your connection with the timber business.

“A. Oh, the first act that I started in to acquire any timber?

“Q. Yes.

“A. Why, I think in—

(Testimony of C. W. Robnett.)

“Q. Understand me, tell us whether or not your first connection was filing upon a claim with the intention of acquiring title or was it as a locator of people upon claims? A. As a locator.

“Q. Will you explain to the jury what the business of locating consists of?

“A. Why, the first and essential item of it is to convey knowledge to a party of the description or the whereabouts of a particular claim which is open to be filed upon, and it does not necessitate that the locator is to take the party out who files on it; if he makes him acquainted with the fact that there is a certain claim in a certain locality which can be had, and gives him a certain idea of the character [2263—1933] of the timber on the land, and this party can go and see the land himself, that is all that is necessary, and you require him to pay a location fee.

“Q. Briefly, then, it is simply giving the proposed entryman information as to the location and the probable value of 160 acres of unappropriated public lands? A. Yes, sir.”

Q. You so testified, did you?

A. Yes, sir.

Q. Is that testimony that you gave concerning the business of a locator true or false?

A. Why, the business of a locator, that is true, I guess.

Q. Did you not also testify:

“Q. Mr. Robnett, did you hear the story of the witness Joel H. Benton while on the witness-stand?

(Testimony of C. W. Robnett.)

“A. Yes, sir.

“Q. Have you known this Mr. Benton long?

“A. Ever since I came to Lewiston.

“Q. How intimately have you known him?

“A. We both went to the same church and were officers in the same church.

“Q. Did you hear his testimony relative to an arrangement between you and him whereby he was to locate or squat upon unsurveyed Government lands, and hold it as a squatter's homestead until such time as it could be surveyed, and then acquire title to it under the Government laws?

“A. Yes, sir.

“Q. The Federal laws, I should say; did you hear his testimony to the effect that the arrangement between you was that after acquiring title—no—that during the process of time of acquiring title you should pay all of the cash expenditures, and after acquiring title the [2264—1934] lands should be sold, the expenses deducted and you should divide the balance? A. Yes, sir.

“Q. Did you have such an agreement with him as that at that time?

“A. I had an agreement, yes, sir.

“Q. And when was it that you entered into this agreement? A. Along in the spring of 1902.”

You so testified, did you, Mr. Robnett?

A. Yes, sir.

Q. Was that testimony true or false? A. True.

Q. Did you not also testify:

“Q. Are you acquainted with Mrs. Mary J. Har-

(Testimony of C. W. Robnett.)

ris, and her daughters Jeanette and Ethel?

“A. Yes, sir.

“Q. How long and where have you known them, Mr. Robnett?

“A. Why, I got acquainted with them I think in the fall of 1901.

“Q. Where? A. Lewiston, Idaho.

“Q. How intimately were you acquainted with them?

“A. Why up to that time? I mean, up to what time?

“Q. Up to the time you entered in—how intimately have you been acquainted with them?

“A. Why, we have been friendly up to the last couple of years, or three years.

“Q. State whether or not during the spring of 1902, and about the time you made the arrangement with the witness Joel H. Benton as you and he have testified to, you had any agreement or understanding with reference to Mrs. Harris holding down a claim in the vicinity of Benton's claim.

“A. Yes, sir. [2265—1935]

“Q. What was that agreement or arrangement?

“A. The same as with Mr. Benton.

“Q. Well, now, you have not stated the agreement or arrangement and will you state it as you understood it?

“A. You mean with each one of the parties?

“Q. Yes, if it was just the same; just state in substance what the arrangement was?

(Testimony of C. W. Robnett.)

“A. Not what led up to it? Just the arrangement?

“Q. No, just the arrangement or agreement?

“A. Well, the agreement was along about these lines: That they were to go out on these claims which Mr. Smith had located and built cabins on.

“Q. What Mr. Smith is that? What are his initials?

“A. W. A. Smith, and he was to cruise out or run out the lines of the claims, and build cabins on them, and I was to pay Mr. Smith one hundred dollars location, and fifty dollars for the cabins, and pay the expenses of these parties to go out to the timber, their expenses while there, and their expenses back to town and was also to furnish the money for the proof, and at the time that the claims were proven up on, there was to be a deed from each one of the parties given and placed in escrow and after the claims were sold, and after the expenses were deducted, the proceeds were to be divided.”

You so testified, did you? A. Yes, sir.

Q. Was that testimony true or false? A. True.

Q. Did you not also testify:

“Q. In connection with transaction with Mrs. Harris, were there any other expenses than the expenses incurred upon the claim and going to and from the claims? [2266—1936]

“A. Yes, sir.

“Q. What were they?

“A. Well, after the arrangements were made for her to go out she came to me and stated unless I stood

(Testimony of C. W. Robnett.)

good for the house rent to Mr. Thatcher that she was back, he would not permit her things to remain in the house while she was in the timber.

“Q. Where was the house located?

“A. Lewiston, Idaho. I told her all right, I would speak to Thatcher about it and stand good for it. I did so. It was about thirty dollars, I believe, at that time. Then, at another time, next day I believe, or such matter, she came to me and stated that Wildenthaler & Powell were going to sue her for a grocery bill unless that was paid and I gave her the money to pay her grocery bill and then she said—

“Q. Do you remember how much that was?

“A. Somewhere in the neighborhood of twelve dollars. Then, she said there was a payment due on her sewing-machine and that she would lose that unless that installment was paid, and I gave her five dollars to make a payment on the sewing-machine and in getting the groceries and things to take up to the mountains and provisions, I made arrangements with Ward at the Alexander Company's store to allow her to have what was necessary to be sent up to the mountains. And it was to consist of anything that went to the mountains, but Mr. Ward called me up and said she was buying things and sending them down to the house and also buying family wearing apparel, and I told him then not to allow any more to be charged up to her account there that I stood good for unless there was a written order from me.”

Did you so testify?

A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. Was that testimony true or false?

A. True. [2267—1937]

Q. Did you also testify:

“Q. Now, then, Mr. Robnett, I desire to call your attention to the testimony for the witness Bertsell H. Ferris to the effect that he heard you at Mrs. Harris’ cabin in the timber, in the summer of 1902, ask the elder daughter of Mrs. Harris, Miss Jeanette Harris, to file on a timber claim. Did you hear that testimony? A. Yes, sir.

“Q. Tell us whether or not you ever at any time met Bertsell H. Ferris in the woods at the cabin of either Mrs. Harris or Mr. Benton?

“A. No, sir; I did not.

“Q. Do you remember the occasion of Mrs. Harris and Mr. Benton and the Misses Harris starting for the timber? A. Well, partly, yes, sir.

“Q. Do you remember whether or not Mr. Ferris accompanied them at that time? A. He did.

“Q. Do you remember whether or not he had returned before you went up into the timber?

“A. He had.

“Q. Where had you seen him before leaving for the timber? A. On the streets in Lewiston.

“Q. Which way did you go to the timber where Mr. Benton and Mrs. Harris were and where Harris had been?

“A. Why, it was up the Clearwater, but I didn’t go direct there; I went to other places first.

“Q. That is what I am asking you; tell us how you went?

(Testimony of C. W. Robnett.)

“A. It has been quite a while ago; I don’t remember exactly, but I was over in the Pierce City District and around in the timber there quite a while following those trails. [2268—1938]

“Q. Tell us what you can from where you went when you arrived at these cabins or locations of Mrs. Harris and Mr. Benton?

“A. Why, I think, if I remember distinctly, I came from the Pierce City District.

“Q. By what do you want us to understand that that is your recollection?

“A. Yes, sir; that is my recollection, yes, sir.

“Q. About how many days was it now after you left Lewiston and left Mr. Ferris there, before you arrived at Mrs. Harris’ cabin?

“A. Four or five days, six perhaps.”

You so testified, did you?

A. Yes, sir.

Q. Was that testimony true or false?

A. True.

Q. Did you also testify:

“Q. Did you hear the testimony of Miss Jeanette Harris relative to a conversation that you had with her there in which she testified that you asked her to file upon a claim? A. I did.

“Q. Will you tell us what that conversation was as you remember it?

“A. The conversation in the timber?

“Q. Yes, with Miss Jeanette.

“A. Why, she stated that she wanted a timber claim, and I made the statement if she wanted to there could be a claim allotted to her, and that it was

(Testimony of C. W. Robnett.)

going to be some time before the plats would be filed, so they could file on them, that perhaps she would be of age by that time, as she would be of age the following spring, and in case it was not taken, she could go ahead and file on it, and she was right out there where she could see the claim.

“Q. Do I understand you to say that this land at that time when [2269—1939] you suggested that she make a selection of a claim was in the market or could be filed upon?

“A. It could not. The plats had not arrived.

“Q. Tell us whether or not there was any understanding about your furnishing her with the means to acquire the claim?

“A. Yes; I think there was.

“Q. Now tell us what the understanding was, or what was said about it?

“A. Well, it was a long—I cannot give the exact words, but the substance of it was simply to the effect that if this timber was thrown open after she became of age, and was able to file on it, I would see that she got the money to make the final proof.

“Q. Did you ever consummate the arrangement with Joel H. Benton to the extent that he made proof upon this tract of land that he was holding down as a squatter?

“A. No, sir; it was not completed.

“Q. Did you ever consummate the arrangement that you had with Mrs. Harris with reference to her tract to the extent that you or she acquired title to that homestead? A. No, sir; it was not.

“Q. When or about when, if at all, were the ar-

(Testimony of C. W. Robnett.)

rangements which you had entered into with Joel H. Benton and Mrs. Harris regarding these claims which they were to hold as squatters changed or altered if at all, or abandoned?

“A. When were they?

“Q. Yes.

“A. Along in, I think, the spring or early—either in the winter or spring of 1903, that is, I mean late in the winter, just before the spring, or right in the early part of the spring.”

Did you so testify, Mr. Robnett?

A. Yes, sir. [2270—1940]

Q. Was that testimony true or false? A. True.

Q. Did you also testify:

“Q. Mr. Robnett, tell us whether or not at the time you entered into this arrangement with Mr. Joel H. Benton and Mrs. Harris, which we have referred to, you were acting in good faith, or without an intent to violate the law? A. I was.”

Did you so testify? A. I did.

Q. Was that true or untrue?

A. I was acting with intent to evade the law.

Q. Did you not also testify:

“Q. Tell us the circumstances under which this arrangement was abandoned.

“A. Well, I— since the return of the parties to Lewiston, it had been a constant source—

“Q. Mr. Robnett, I will ask you to be a little more particular. You used the word ‘parties,’ and I wish you would be as particular as I am in naming them.

“A. Well, I was going to go ahead and name Mrs.

(Testimony of C. W. Robnett.)

Harris, but it was after they all returned from the timber. Mrs. Harris had been a great source of annoyance to me and she had been—and she had not kept any of her promises to repay any of the money. Well, after I had stood this annoyance as long as I could, I went to Mr. I. N. Smith and stated the facts to him. When I went in there—

“Q. Who is Mr. I. N. Smith?

“A. An attorney in Lewiston.

“Q. How long has he been living there?

“A. I think he came there perhaps some time in either 1900 or 1901, I don't quite recollect. [2271—1941]

“Q. How long have you been acquainted with him?

“A. Ever since just after he came there.

“Q. What has been his business since he came to Lewiston? A. Attorney at law.

“Q. How intimately were you acquainted with him? A. Why, we were very friendly.

“Q. Now, go on and state what your transactions were with Mr. Smith.

“A. I went to Mr. Smith to get him to draw up a contract or agreement whereby it would set forth the conditions of this agreement with Mrs. Harris and as a protection. After he was acquainted with the facts of it, he told me to get out of it, to lose if necessary what I had in it, that I was placing myself in danger of the penitentiary and the agreement was in strict violation of the law, to get out and not have anything further to do with it. I told him I

(Testimony of C. W. Robnett.)

would. I went then either that day or a day or so afterwards. I met Mrs. Harris on the street in front of the Beehive store and I told her of this conversation and told her that I would not have anything further to do with regard to the claims, as far as any agreement between us was concerned, that I had a great deal of money in there, and that I expected to keep that claim for my wife to file upon, but in consideration of the fact that she had gone out there, I would see that she was located upon, if she would take them, a claim, and also one for Jeanette Harris, and that I would not get a profit in the form of a location fee, but if there was any location fee to be paid, I would pay it myself, that the location would not cost her a cent, and very likely she would be able to make arrangements with Mr. Thatcher for the proof money when the time came, but that I would not have anything further to do with the transaction, and our agreement in regard to the squatter's claim was off and I would not have anything further to do with it."

Did you so testify, Mr. Robnett?

A. Yes, sir. [2272—1942]

Q. Was that testimony true or false?

A. True.

Q. Did you not also testify:

"Q. Mr. Robnett, look at Plaintiff's Exhibit No. 80, J. E. B., and tell us whether or not the figures or memorandum on the face or the side where it is marked as an exhibit, is in your handwriting?

"A. Why, the upper figures are, yes, sir; the lower

(Testimony of C. W. Robnett.)

figures are not.

“Q. Tell us whether or not you ever gave that memorandum to Mrs. Harris.

“A. I did at this conversation.

“Q. Did you hear the testimony of Mrs. Harris to the effect that at that time, in front of the Beehive store, you put into her hands a sworn statement for a stone and timber entry already made out, and told her to go over to the land office and file it, and that if she did not, you would send her to the penitentiary?

“A. You mean did I hear that conversation?

“Q. Yes. A. Yes, sir.

“Q. You heard that testimony of hers, upon the witness-stand? A. Yes, sir.

“Q. Tell us whether or not you ever made any such statement to Mrs. Harris? A. I did not.

“Q. Tell us whether or not, at any time, you ever presented to Mrs. Harris any papers in connection with any filing of any kind or nature?

“A. Nothing more than this exhibit (Plaintiff's Exhibit 80).

“Q. What conversation did you have with her there as to or relating to the illegality of the arrangement that she and you had entered into with reference to the homestead? [2273—1943]

“A. Simply what I have referred to a moment or two ago.

“Q. Can you tell us the conversation?

“A. Why, I told Mrs. Harris that our arrangements were of an illegal nature and strictly in viola-

(Testimony of C. W. Robnett.)

tion of the law, and I would not go ahead with it on account that we were placing ourselves in danger of the penitentiary if we proceeded to go further and consummate this arrangement and I would not have anything to do with it, but the fact that I had a great deal of money at stake and invested there, I thought it was right I should hold that claim for my wife.

“Q. Did you tell her that Mr. I. N. Smith had advised you of the illegality of your arrangement with her? A. I did.

“Q. Did you hear her testimony to the effect that you told her that Mr. Little would be a witness for her and that you would get another, and they would go right over to the land office? A. I did.

“Q. Tell us whether or not you ever made any such statement as that to her? A. I did not.”

Did you so testify? A. Yes, sir.

Q. Was that testimony true or false? A. True.

Q. Did you not also testify:

“Q. Now, Mr. Robnett, did Mrs. Harris refuse to file a stone and timber entry upon the land offered her? A. Yes, sir.

“Q. What reasons, if any, did she give you for not doing it?

“A. Why, she said she had been up there on this claim, and she wanted that claim. [2274—1944]

“Q. You say, wanted that claim?

“A. She wanted the homestead; she said that was the claim she wanted, and she would file on no other, but I explained to her that this was a claim she could file on at the present time, and any time she wanted

(Testimony of C. W. Robnett.)

to in the near future; I would see somebody took her out and showed her the claim, but she said no, I won't go; I won't take any claim except the homestead, and I told her emphatically that that was a claim I was going to have myself; I was going to hold it for my wife to file on and that she should not have it, but she could have these others as I had outlined.

“Q. Do you know whether or not she did file upon a claim afterwards?

“A. She filed a homestead on it, yes, sir.

“Q. The claim she filed upon, according to your understanding is the same claim that you and she had the arrangement about in 1902? A. Yes, sir.

“Q. Did you hear the testimony of Mary J. Harris to the effect that you told her in front of the Beehive store that it was not necessary for her to go upon a stone and timber claim before filing?

“A. Yes, sir.

“Q. Tell us the truth about that. Did you ever make any such statement to her?

“A. I did not.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. Was the testimony true or false? A. True.

Q. Did you not also testify:

“Q. Did you hear the testimony of the daughter Jeannette Harris to the effect that it was not necessary for her to go upon a timber claim before making the sworn statement or filing upon the claim? Did [2275—1945] you hear her testimony?

“A. I did not understand her testimony to be quite that. Did she make that statement?

(Testimony of C. W. Robnett.)

“Q. Did you ever make any such statement to Miss Jeannette Harris? A. I did not.”

Did you so testify? A. Yes, sir.

Q. Was that testimony true or false? A. True.

Q. Did you not also testify:

“Q. Mr. Robnett, did you hear the testimony of Mrs. Mary J. Harris to the effect that at one time in the directors’ room of the Lewiston National Bank, and at another time in front of the Beehive store, in the city of Lewiston, you told her that you had Mr. West fixed so that he would pass anything, meaning J. B. West, who was then register of the land office at Lewiston? A. Yes, sir.

“Q. Did you ever have any such conversation as that with her? A. No, I did not.

“Q. Mr. Robnett, have you ever, at any time, in any or all of your transactions in connection with public land matters or locating people upon public lands, or acquiring title to lands yourself, ever asked Mr. J. B. West to do anything for you?

“A. I have not.”

Did you so testify? A. Yes, sir.

Q. Was that testimony true or false? A. True.

Q. Did you not also testify:

“Q. Mr. Robnett, please tell us whether or not you ever informed [2276—1946] Joel H. Benton of the advice you have received from Mr. I. N. Smith?

“A. I did.

“Q. By the way, where was Mr. I. N. Smith’s office located at that time?

“A. Up on the second floor of the bank building

(Testimony of C. W. Robnett.)

in the northwest corner.

“Q. Of the Lewiston National Bank building?

“A. Of the Lewiston National Bank building.

“Q. Were the arrangements which you had entered into with Mr. Benton relative to this homestead as you have testified, and as he testified, abandoned?

“A. They were.

“Q. When, as with reference to the time you had received this advice from Mr. Smith?

“A. Shortly afterward.

“Q. Did you hear the testimony of Mr. Joel H. Benton relative to a conversation you had with him in the timber some time in 1902, relating to a stone and timber claim? A. I did.

“Q. How many times were you up in the timber at the cabins of Mr. Benton and Mrs. Harris during 1902, while they were there?

“A. I was only there one trip.

“Q. Just that one trip?

“A. Yes, sir, just that one trip, but I was there several days on that trip.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. Was that testimony true or false? A. True.

Q. Did you not also testify, Mr. Robnett: [2277—1947]

“Q. Will you state the conversation which you had with Mr. Joel H. Benton there upon that time, upon the circumstances which Mr. Benton referred to as you remember them?

“A. I had been out walking through the timber and came in and found Mr. J. H. Benton and W. B.

(Testimony of C. W. Robnett.)

Benton and W. A. Smith sitting on a log talking as I came up to the clearing in front of the house. Mr. J. H. Benton spoke up and said, "Clarence, Al has been telling us about some claims on the river that you can file on now, and in consideration of the fact that you paid him a full location fee for the claims here, and it will be some time before we can file and prove upon them, he will locate us down there for half price. I would like to go ahead and file down there. Will you see me through?" I said, "Mr. Benton, I will, provided Mr. Smith says they are good claims."

Did you so testify? A. Yes, sir.

Q. Was that testimony true or false?

A. It was partly true, but it does not give the complete arrangements.

Q. Did you not also testify:

"Q. Now, which Mr. Smith? Al Smith?

"A. W. A. Smith, yes, Al Smith.

"Q. At that time, Mr. Robnett, had you learned from I. N. Smith of the illegality of the arrangement which you had made with Mr. Benton and Mrs. Harris about the homestead? A. I had not.

"Q. Was there ever any other conversation between you and Mr. Joel H. Benton?

"A. What is that?

"Q. I will withdraw that question, Mr. Reporter.

"Q. Do you know whether Mr. Benton afterwards filed on this stone [2278—1948] and timber claim that he made reference to?

"A. He did."

(Testimony of C. W. Robnett.)

Did you so testify? A. Yes, sir.

Q. Was that testimony true or false?

A. True.

Q. Did you also testify:

“Q. After that conversation in the timber that you have just testified about, the stone and timber entry of Joel H. Benton, did you ever have any conversation with Joel H. Benton with reference to a stone and timber claim before he filed?

“A. I did not.

“Q. Did you ever at any time have any conversation with Mr. Joel H. Benton before he made final proof upon this stone and timber claim about the claim?

“A. Nothing more than in regards to furnishing the money for the proof. Perhaps he might have come in there to get the money to make the filing with, but there was not any conversation.

“Q. State whether or not you ever at any time before Joel H. Benton had made final proof upon this stone and timber claim, or entry, had had any conversation, understanding, or agreement with him that he should convey the title he was to acquire from the Government to you or to any other person.

“A. I had not.

“Q. Did you have any conversation with Mr. Joel H. Benton after he had made final proof with reference to his conveying the claim to you?

“A. Why, some time afterwards, I had him execute a deed to me as a protection in regard to the money advanced.

(Testimony of C. W. Robnett.)

“Q. Will you state now what that conversation was?

“A. I don't think there was any conversation, any more than that I [2279—1949] had a deed executed and sent a notary public there to have him acknowledge, sign and acknowledge both him and his wife, and it was done, but still the right to dispose of the claim after this deed was executed still remained in the right of Mr. Benton as further conversation will determine.”

Did you so testify? A. Yes, sir.

Q. Was that testimony true or false?

A. It was untrue.

Q. Did you not also testify:

“Q. Did you finally become the owner of that claim? A. I did.

“Q. Tell us what moneys, if any, and what expenditures, if any, were deducted from the price or the consideration you paid him for the claim?

“A. Why, the money which I had advanced him for his living expenses, personal expenses, also his portion of the expenses in regard to the homestead and the expenses relative to the timber and stone claim.”

Did you so testify? A. Yes, sir.

Q. Was that testimony true or false?

A. True.

Q. Did you also testify:

“Q. Now, Mr. Robnett, I desire to take up another phase of your arrangements with Joel H. Benton and Mrs. Mary J. Harris, relative to those home-

(Testimony of C. W. Robnett.)

steads upon which they had squatted upon the unsurveyed lands. What arrangements did you make about them, or either of them handling or having the money necessary to meet their expenses while there?

“A. I gave Mr. J. H. Benton a check-book.

“Q. On what bank? [2280—1950]

“A. On the Lewiston National Bank, and told him for all expenses relative to the claim to draw checks for them, and mark them as such, and also for any moneys he might need for his personal expenses to mark that personal, ‘per’ and those checks were taken up by myself.

“Q. Now, those checks were to be marked ‘per’ and ‘ex’ you say? A. Yes, sir.

“Q. You say those checks were taken up by yourself. What do you mean by that? Explain how it was done.

“A. Why, they came in and I took them up and issued my own personal check for them.

“Q. They came in where?

“A. They came into the bank.

“Q. They were not drafts upon you?

“A. No, sir; they were personal checks.

“Q. They were personal checks drawn on the bank?

“A. Yes, sir; the Lewiston National Bank.

“Q. Did you arrange to open an account with Joel H. Benton in the bank records, the bank-books?

“A. No, sir.

“Q. Explain to us how those checks were carried

(Testimony of C. W. Robnett.)

or held. Did you have an account in the Lewiston National Bank? A. I did, yes, sir.

“Q. Tell us how those checks were drawn by Joel H. Benton under this arrangement with you, were held in the bank until such time as you should take them up with a check on your own account?

“A. They were simply carried there as cash items.

“Q. Tell us what you did with the Benton checks when they came to the bank.

“A. If I was at the bank, they were simply put in with the balance of the checks, and in the evening when the checks were taken out and the [2281—1951] cash to be entered up in the depositors' ledger, I would take out the Benton checks, and make a personal check for the total of the Benton checks. If for some reason I was out of the bank, they would be carried as cash until I returned and took them up.

“Q. Was that under your direction to the other employees there in the bank? A. Yes, sir.

“Q. You say you had an account in the bank?

“A. I did.

“Q. Now, when you took up the Benton checks, what do you mean by issuing your personal check?

“A. By issuing a check on my account, a bank check on my account, the same as if I had drawn a check, and drawn the money from the bank.

“Q. Did you have an account there in any other way that was not personal, or a partnership account in which you were interested as a copartner?

(Testimony of C. W. Robnett.)

“A. Not at that time.

“Q. What I want to get at, and what the Court wants to get at is why you used the expression ‘personal checks’?

“A. For this reason: That I did have another account there which was money belonging to my relatives.

“Q. And how was that carried in the bank?

“A. That was carried in—I don’t know now—I don’t remember whether that was carried in the name of Treasurer—or carried—there were two or three accounts in which I had authority to check on, and it might have been carried in the name of my brother.

“Q. But by personal check do I understand you to mean, to take up the Joel H. Benton checks that came into the bank marked as you say ‘ex’ or ‘per’? You simply wrote your check for that amount upon the bank which was carried to your private account in the bank? [2282—1952]

“A. To my own private account, yes, sir.

“The COURT.—Then, do I understand that the amount was charged to his account rather than Benton’s account?

“A. Yes, sir; it was charged to my account.

“Q. It went into your account?

“A. Yes, sir. Mr. Benton did not have an account there.

“Q. What Mr. Benton had was more in the nature of a credit through you, his business went through your account? A. Yes, sir.”

(Testimony of C. W. Robnett.)

Did you so testify, Mr. Robnett?

A. Yes, sir.

Q. Was that testimony true or false?

A. True.

Q. Did you not also testify:

“Q. Did you hear the testimony of Joel H. Benton to the effect that shortly before or shortly after his return from Boise, about the month of July, 1905, you stated in substance to him that it was necessary for you, meaning yourself and Mr. Benton, to stand together so everything would come out all right, did you hear that testimony?

“A. I did.”

Did you so testify, Mr. Robnett?

A. I did.

Q. Was that testimony true or false?

A. True.

Q. Did you not also testify:

“Q. Will you state your remembrance of that transaction, Mr. Robnett?

“A. Well, it was shortly after his return from Boise, and I called on him at the store, Mr. Alexander's store, where he was working and told him that we had both been indicted, that he was surely mistaken, or got turned around in the facts of the conversation down there, and if we would [2283—1953] stand together and state the facts as they were and the exact truth, why we would be all right, that they couldn't do anything to us at all, for there wasn't nothing there in the timber and stone entry that was any violation of the law. Do you want me

(Testimony of C. W. Robnett.)

to state what he said?"

Did you so testify? A. Yes, sir.

Q. Was that testimony true or false?

A. It was untrue.

Q. Did you also testify as follows:

"Q. Yes, give us that conversation.

"A. And he replied that he remembered as much about the facts as I did, and that he was not going to have him come in there and tell him what he was to say; that he was a witness for the Government and he had not been indicted, he had been reliably informed that he was not indicted at all, and would not be harmed in the least, so I left him."

Did you so testify, Mr. Robnett?

(No answer.)

Q. Did you not also testify, Mr. Robnett, as follows:

"Q. Now, Mr. Robnett, we will go to another part of this testimony. Are you acquainted with the witness who testified in this case, Bertsell H. Ferris?

"A. I am.

"Q. Did you hear his testimony? A. I did.

"Q. How long have you known Mr. Ferris?

"A. Why, I think either the fall of the year 1901, or the spring of 1902.

"Q. Where have you known him?

"A. Lewiston, Idaho.

"Q. How intimately have you been acquainted with him? [2284—1954]

"A. Why, just in a friendly way.

"Q. Are you acquainted with George Ray Robin-

(Testimony of C. W. Robnett.)

son, a witness who testified in this case?

“A. I am.

“Q. And did you hear his testimony?

“A. I did.

“Q. How long have you known Mr. Robinson?

“A. Why, since the evening that he called at my home in the spring of 1903.

“Q. Coming down now to the transaction between you and Mr. Ferris and Mr. Robinson, in connection with their filing upon any Government land, when was the first conversation you had with either of these gentlemen, about when?

“A. Why, several times after Mr. Ferris returned from the timber, that summer, he spoke to me on the street, said that he would like to have a timber claim, and the first conversation that came up where Robinson's name was mentioned was there in front of the Electric Light Company's office, just prior to them going up to my house.

“Q. About how long prior, Mr. Robnett?

“A. Why, I don't remember; it was a day or so, maybe two or three.

“Q. Do you remember the circumstances of their coming to your house? A. I do.

“Q. Did you have any conversation there with them about locating upon a couple of stone and timber claims? A. I did.”

Did you so testify, Mr. Robnett?

A. Yes, sir.

Q. Was that testimony true or false?

A. True.

(Testimony of C. W. Robnett.)

Q. And did you not also testify as follows:
[2285—1955]

“Q. Will you give us that conversation, just as you remember it?

“A. Well, when they came into the house in the evening, it was along somewheres about in the neighborhood of seven or a little after. Mr. Ferris introduced Mr. Robinson to me, and made the statement right after the introduction that Mr. Robinson was a friend of his and that he wanted him to have the best claim that I had and that they would like to have the two best claims, but he wanted Mr. Robinson to have the very best, and I told him that—

“Q. Did he give any reason at that time why he wanted Mr. Robinson to— A. Yes.

“Q. What were they?

“A. He said Mr. Robinson was supporting his mother and either a brother or sister in school.

“Q. Go on with the conversation.

“A. I told him that I would use my best endeavors to secure them the best claims that the locators had, and I told them I would try to get Mr. Benton over the telephone and have him bring the plats up, and I went to the 'phone and called Mr. Benton up at Mr. Wiggins' cigar-store as I remember it, and he said he would come right on up, and would stop as he went by, as he was going to Mr. Knight's to spend the evening; so he came up with the plats, and I introduced him to Mr. Robinson. I think he had met Mr. Ferris, and we discussed the timber and the location of it, where it was and also

(Testimony of C. W. Robnett.)

relative to the money matters and in regard to them going up into the timber to see these claims. After Mr. Benton had given me the plats, we went to the dining-room table, and he read off the descriptions, and I wrote it down on a couple of slips of paper, which I afterwards gave to the boys.

“Q. Gave one to each of them?

“A. I gave one to each of them, yes, sir. And Mr. Benton made the statement of which claim he thought was the best, and I gave that to [2286—1956] Mr. Robinson. Now, they spoke then and brought the question up at once that they could not go up right away. After he (Benton) had made the statement that Mr. Benton and Mr. Knight were going to take a crowd up the next few days and wanted to know if we could hold the claims for a while, and Mr. Benton stated that he could, provided that no other cruiser entered that field, and in that event, why, if they were unable to go up at once to see the claims, why we would have to put somebody else on them in order to protect our work, that he had done in that part of the country, so they stated they would go as soon as they could, and if possible they would make the trip with this crowd that was going up, but if not they would make it perhaps by the next trip, or just as soon as possible. So the understanding was that the claims were to be held for these two boys, and we gave them the descriptions so that they would know they would have these two claims.

“Q. Did they give you, or did either of them give

(Testimony of C. W. Robnett.)

you any reason at that time for not being able to go up upon that trip, or any reason for not wishing to go up at that time?

“A. Yes, they stated that they were working for the electric light company and they were short handed and there was a good deal of work that had to be done at once, and they did not believe that it would be possible for them to get away.”

Did you so testify, Mr. Robnett?

A. Yes, sir.

Q. Was that testimony true or untrue?

A. It was partly untrue.

Q. Did you also testify, Mr. Robnett, as follows:

“Q. Now, tell us whether or not you gave them any directions as to where their papers could be made out?

“A. Yes, that question was brought up in this way: In talking over the expenses that would be incurred in regards to the filing and [2287—1957] the proof, the question of making out the papers was brought up, and I told them that Mr. Nickerson had made out most all of my papers, and I would suggest that when they did get ready to file, that they go over and get him to make out the papers and that the fee for making out the papers was one dollar.

“Q. Did you get any part of that one dollar?

“A. I did not.

“Q. Did you pay any part of it?

“A. I did not.

“Q. Now, tell us whether or not there had been any understanding or arrangement with you and

(Testimony of C. W. Robnett.)

Robinson and Ferris or either of them about furnishing them the money to make the purchase and procure the expenses of procuring the claim.

“A. There was.

“Q. What was that conversation, and where did that conversation take place?

“A. It took place there at the house.”

Did you so testify, Mr. Robnett?

A. Yes, sir.

Q. Was that testimony true or false?

A. True.

Q. Did you not also testify Mr. Robnett, as follows:

“Q. Now, what was that conversation?

“A. Why, they stated that they would not have the money to go ahead and pay the location fee, and the proving up money and would like to know if there could be arrangements made so that they could borrow this money, and give security at the time of the proof after they proved up on the two claims and I told them yes, I was satisfied arrangements could be made, and Mr. Thatcher had asked for a number of timber loans, and they wanted to know what the aggregate of it was and I went on and [2288--1958] described the whole thing, that he would advance the money for the location and the cruising, or the estimating, which was \$125, the total, and at the time of the proof he would advance them the balance of the money to make proof, and would then take a note for this \$125 and interest, and for the money advanced for the proof, and would charge a commis-

(Testimony of C. W. Robnett.)

sion of \$200, and they would give a mortgage on their timber claims after they had made proof.

“Q. Tell us whether or not they accepted that proposition or requested you to get the money?

“A. They did.

“Q. What arrangements, if any, did you have with Robinson and Ferris about their giving you any note for this location fee and estimation fee?

“A. Why, I stated that when they came back from the timber and went up to Nickerson’s office to get the papers made out, why they would give Mr. Nickerson a note for \$125 in favor of Curtis Thatcher.

“Q. When did you first discover or have any information, rather, that Bertsell H. Ferris and George Ray Robinson had filed upon these claims?

“A. When Mr. Nickerson brought the notes over to me, at the bank.”

Did you so testify, Mr. Robnett? A. I did.

Q. Was that testimony true or false?

A. It was partly untrue.

Q. Did you not also testify as follows:

“Q. Did you hear the testimony of Mr. Robinson and Mr. Ferris to the effect that they procured copies of or the blank copies of the sworn statement or filing papers of you and took them over to Mr. Nickerson’s office to be made out? A. I did. [2289—1959]

“Q. What is the truth about that?

“A. It is not the truth.

“Q. Did you hear their testimony relative to the conversation they had in the directors’ room of the bank with you in which they stated that you had told

(Testimony of C. W. Robnett.)

them that it was not necessary for them to go upon this land, and make a personal inspection before filing? A. I did.

“Q. Did you have any such conversation with them? A. I did not.

“Q. When did you first learn, if at all, that Ferris and Robinson had never been upon the land before they had made application to purchase or filed their sworn statement?

“A. Well, they stated at the house there that evening that they had not been up there.

“Q. You don't exactly understand. When did you first learn that they had not been upon that land before filing? That is what I mean. Let me ask you another question. When did you first learn, if at all, that they had filed upon these two claims without making an inspection of the claim?

“A. Why, I discovered that they had filed when the notes were brought over, and in conversation with them just prior to the time of making the trip up to the timber they made that statement. Mr. Ferris, I think it was, in a conversation with Mr. Ferris.

“Q. Then about the time they made the trip into the timber with Mr. Benton? A. Yes, sir.

“Q. That Mr. Benton testified about?

“A. Yes, sir.”

Did you so testify, Mr. Robnett?

A. Yes, sir. [2290—1960]

Q. Was that testimony true or false?

A. It was partly untrue.

Q. Did you not also testify as follows:

(Testimony of C. W. Robnett.)

“Q. That was the first knowledge that you had that they had filed without going upon the land?

“A. Yes, sir.”

Did you so testify? A. Yes, sir.

Q. Was that testimony true or untrue?

A. It was untrue.

Q. Did you not also testify as follows:

“Q. Did you hear their testimony relative to a conversation they had in the bank with you over or about the questions that would be asked them upon final proof? A. I did.

“Q. Did you have any such conversation as that with them? A. I did.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. Was that testimony true or untrue?

(No answer.)

Q. Did you not also testify as follows:

“Q. Tell us whether or not, in that conversation, you told them or requested them or advised them to swear falsely? A. I did not.”

Did you so testify? A. Yes, sir.

Q. Was that answer true or false?

A. It was untrue.

Q. Did you also testify as follows:

“Q. Did you hear the testimony of Mr. Curtis Thatcher relative to your arrangements with him to the effect that he would advance the money [2291—1961] necessary to prove up on the stone and timber claim, make proofs, together with the additional sum of \$100 location fee, and \$25 fee for an estimator this morning? A. I did.

(Testimony of C. W. Robnett.)

“Q. Tell us what arrangement, if any, you had made with Mr. Curtis Thatcher at or about the time that you entered into negotiations with Bertsell Ferris and George Ray Robinson?

“A. Perhaps two or three weeks prior to that time, Curtis Thatcher called me into the store one day, while I was passing by, and told me that he had quite a lot of money at his disposal, and would like to make some timber loans, provided that he could get the proper commission, and wanted me to send him some people. I asked him how many loans he could take care of, and he stated quite a number, so at that time I made arrangements with him to take care of I think about fourteen or fifteen, that is, provided I could get them and send them to him. He said he would take care of about that many, and I told him I would see what I could do in regards to that, and for people filing who wanted to get the money to prove up, I would try to make arrangements with them for an advance of *the* for the final proof. The commission with him was \$100 in most cases, where he did not advance all the money, that is the money for the location and estimation, but if he advanced the money for the estimation and the location and the final proof, why he wanted a commission of \$200.”

Did you so testify? A. I did.

Q. Was that testimony true or false?

A. It was partly untrue.

Q. Did you also testify as follows, Mr. Robnett:

“Q. Let me understand you, if he advanced the

(Testimony of C. W. Robnett.)

proving up price, together with the locator's fees and the estimator's fees, which would make something in the neighborhood of \$525, he wanted a commission of [2292—1962] \$200? A. He did.

“Q. And if he loaned only the purchase price, or the \$400, he wanted what? A. He wanted \$100.

“Q. \$100 commission?

“A. \$100 or \$125, depending on where the location of the claim was.

“Q. In the negotiations with Bertsell H. Ferris and George Ray Robinson did you explain to them fully the terms under which you could get the money from Mr. Thatcher? A. I did.

“Did Mr. Thatcher furnish the money, or take up this loan of Bertsell H. Ferris and George Ray Robinson?

“A. Only the location and estimation fee.

“Q. How did he advance that?

“A. He advanced that when I took the notes over.

“Q. Under this arrangement with Mr. Thatcher, what, if any, arrangements had you made for furnishing people with the necessary money to make proof?

“A. Why, simply when they had proved up, why they would bring a note over to him, and made out in his favor, with a mortgage and he would take it up.

“Q. Now, how many people did you make this arrangement with, or about how many, if you remember? A. Why, fourteen or fifteen.

“Q. Did I understand you to say that you had made arrangements with fourteen or fifteen people

(Testimony of C. W. Robnett.)

to loan them money upon the request of Mr. Thatcher? A. I had.

“Q. Now, did Mr. Thatcher make these fourteen or fifteen loans [2293—1963] for you?

“A. He did not.

“Q. How many of them did he make?

“A. About five, I believe, four or five.

“Q. Now, Mr. Robnett, when did Mr. Thatcher inform you or about when, with reference to the time that Ferris and Robinson were to prove up that he could not make these loans?

“A. Oh, about three weeks or such a matter before.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. Was that testimony true or false?

A. True.

Q. Did you not also testify:

“Q. What, if anything, did you do then to get the money elsewhere?

“A. Why, I made inquiry in a number of different sources. I wrote a number of parties that I understood would make loans on final proof and then I went and as the time was drawing near, and this money had to be had, why I spoke to Mr. Kettenbach about it.

“Q. The defendant W. F. Kettenbach?

“A. Yes, sir.

“Q. How long was it before the time to make final proof that you spoke to Mr. Kettenbach?

“A. Four or five days.

“Q. What was the arrangement between you and

(Testimony of C. W. Robnett.)

Mr. Kettenbach?

“A. Why, he said for me to go ahead and make the loans as I had agreed to, and if I was unable to dispose of them, and he would see if he could help me out, or take care of them after I had made the loans.

“Q. After that what did you do in connection with these loans?

“A. I made the loans at the time of the proof.

“Q. Did you take any security? [2294—1964]

“A. A mortgage on the claims.

“Q. In whose name did you take the mortgage?

“A. In my name.

“Q. What did you afterwards do with the mortgage and note of each individual that you took at that time?

“A. I assigned them to Mr. Kettenbach.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. And was that testimony true or false?

A. It was partly untrue.

Q. Did you also testify as follows:

“Q. Will you take this list marked Plaintiff's Exhibit 71, this list of mortgages on page 2 of Plaintiff's Exhibit 71, headed 'Mortgages' and from the names of the mortgagors in that list, tell us whether or not any of those people mentioned on that list were the people who gave you mortgages that you afterwards transferred to Mr. W. F. Kettenbach?

“A. Do you want me to name them out?

“Q. Yes; just name them out from that list, commencing from the first of the mortgage list.

(Testimony of C. W. Robnett.)

“A. Well, there is George Ray Robinson, Bertsell H. Ferris, Benjamin F. Long, John H. Long, Frances M. Long, Wren Pierce, Benjamin F. Bashor, Ellsworth Harrington.

“Q. Ten?

“A. Yes—No, I guess it is nine.”

Did you so testify? A. Yes, sir.

Q. Was that testimony true or false? A. True.

Q. Did you also testify as follows, Mr. Robnett:
[2295—1965]

“Q. Mr. Robnett, at the time that you took these mortgages from these people whose names you have just read, was there any understanding or was there any relations between you and any of those mortgagors whereby you understood that you were to acquire any interest in the land?

“A. There was not.”

Did you so testify, Mr. Robnett?

A. Yes, sir.

Q. Was that answer true or false?

A. It was untrue.

Q. Did you also testify as follows:

“Q. Mr. Robnett, I want to ask you whether or not you transmitted for record any papers such as receiver's receipts or deeds to you, or mortgages to you, as mortgagee in the mortgage or grantee in the deed, to the auditor and recorder, or the recorder I will say of Shoshone County, State of Idaho, during the time that you were engaged in locating, in the business of locating, people upon timber claims and buying and selling timber? A. I did.

(Testimony of C. W. Robnett.)

“Q. Will you tell us whether or not you ever used any slips belonging to the Lewiston National Bank, of the form and style that I now hand you?

“A. I did.

“Q. Can you tell us, Mr. Robnett, of any specific instance in which you used blanks like the one I show you, belonging to the bank for the purpose of transmitting to the recorder of Shoshone County any of these instruments?

“A. Why, most always, when there was only one or two, I used those, in fact, I guess always.”

Did you so testify, Mr. Robnett? [2296—1966]

A. Yes, sir.

Q And was that testimony true or false?

A. It was true.

Q. I will ask you if you did not also testify as follows, Mr. Robnett:

“Q. Mr. Robnett, I desire to direct your attention for a moment to a certain conversation referred to in Mrs. Mary J. Harris’ testimony. Do you remember that she testified while a witness upon the stand that she had had various conversations with you on the streets there in Lewiston, in which you stated to her that her daughters could take up claims although they were not of age and you advised them to do it? A. I do.

“Q. Did you ever have any such conversation as that with her? A. I did not.

“Q. Do you remember her testimony when testifying as a witness here in this case to the effect that you also told her the same thing practically, or in sub-

(Testimony of C. W. Robnett.)

stance in the directors' room of the Lewiston National Bank? A. I do.

“Q. Did you ever have any such conversation as that with her there?

“A. I did not. Do you mean by that the wording of the conversation was not at the place or having the conversation in dispute?

“Q. I mean this: Did you ever tell her in the directors' room of the Lewiston National Bank that her daughters, although they were not of age, could take up timber claims, and that you advised them to do it? A. I did not.”

Did you so testify? A. Yes, sir. [2297—1937]

Q. And was that testimony true or false, Mr. Robnett? A. True.

Q. Did you also testify as follows, Mr. Robnett:

“Q. How many claims did you say that you owned at this time? A. Eight.

“Q. Have you ever conveyed any land to Kester and Kettenbach? A. One claim.

“Q. One hundred and sixty acres, or one quarter section? A. Yes, sir.”

Did you so testify? A. Yes, sir.

Q. Was that true or false? A. True.

Q. Did you also testify as follows:

“Q. Why did you deed it to them?

“A. Why, I wanted to sell some of the timber that I held, and they offered me \$100 more than Jo Malloy would give me for the same claim.”

Did you so testify? A. Yes, sir.

Q. Was that true or false?

(Testimony of C. W. Robnett.)

A. The answer does not state the full reason.

Q. Did you not also testify as follows, Mr. Robnett:

“Q. Mr. Robnett, do you know Robert O. Waldman? A. I do.

“Q. How long have you known him?

“A. Why, I have known him ever since he came to Lewiston, perhaps some time in the year 1901 or 1902.

“Q. Did you hear his testimony upon the stand about his negotiations with you in securing a timber claim? [2298—1968]

“A. I did.

“Q. Will you state to the jury in your own way the first conversation that you had with Mr. Robert O. Waldman about taking a claim?

“A. I was in the store there one evening, going home from the bank, and he was waiting on me, and I was making some purchase and he said he would like to take up a timber claim. Well, I told him that I had a claim in mind that he could have and he stated all right, he would be pleased to go ahead and would talk the matter over a little later with me in regard to it. He wanted to know something about the expenses that would be attached to a claim. I told him that I would charge him \$100 location fee, and that he would have his filing fee in the land office and the making out of the papers which would amount to \$9.00 and he stated that at the time of his proof he would furnish his own money so there wasn't anything further mentioned in regard to that, and the supposition, and in fact the conversation was

(Testimony of C. W. Robnett.)

along the line that in a few days he would get away and go up and see the claim, and would go ahead and file, and I left the store with the understanding that he should have the claim.”

Did you so testify? A. Yes, sir.

Q. Was that testimony true or false?

A. It was untrue.

Q. Did you also testify as follows:

“Q. Do you know whether he made a filing or not?

“A. Yes, sir; he did.

“Q. Where was this claim located, if you remember, about where?

“A. It was up on the Clearwater river, almost directly opposite Mr. Steiner’s place. •

“Q. Did you go up with him to the claim?

“A. I did not.

“Q. Do you know whether or not he went to the claim other than [2299—1969] from what he said?

“A. I think that he did.

“Q. Do you know who gave him the directions to enable him to go there? A. I did.

“Q. Tell us whether or not you had any conversation with Mr. Waldman about his going on the claim.

“A. Not to my knowledge.

“Q. Did you give him any directions to enable him to find the claim? A. I did.

“Q. From that conversation you had with him about the claim, and the directions you gave him, what was your understanding as to his going upon the claim? A. I understood that he had gone.

“Q. When did you next have a conversation with

(Testimony of C. W. Robnett.)

him about taking the claim?

“A. Why it was, you mean there at the store?

“Q. Yes.

“A. Well, it was just a day or so before he started out on the trip when I gave him the numbers and the description of the claim.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. Was that testimony true or was it false?

A. It was partly untrue.

Q. Did you also testify as follows on that occasion, Mr. Robnett:

“Q. When did you learn that he had filed on the claim?

“A. Some time after he had already filed, a week or such a matter, or two.

“Q. Tell us whether or not he gave any note for this location fee? [2300—1970]

“A. He did not. After I had seen the notice in the paper, the publication notice, I dropped into the store to see him in regards to the matter and he stated that he had filed, and he would take up the matter for *seucing* me in regards to the location fee in a few days, as he didn't know at that time whether he was going to have the money, as he was having trouble in regards to the contractor on his house, and it might be necessary that he would have to borrow the money to make final proof.

“Q. Do you know whether or not he did borrow the money afterwards to make final proof?

“A. He borrowed it from me.

“Q. How much money did you advance him at that time?

(Testimony of C. W. Robnett.)

“A. Why the amount of the land office fee, I don’t remember how much.

“Q. The amount of the land office fee on final proof?

“A. Yes, sir; that was, including the fee or the expenses in the land office, and also the Government fee, or the price of the land.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. And was that testimony true or untrue?

A. It was untrue.

Q. And you knew it was untrue at the time, did you? A. Yes, sir.

Q. Did you not also testify, Mr. Robnett, as follows:

“Q. Did you hear his testimony relative to the fact that he had had this understanding that he had had an arrangement with you whereby you and he were to divide the net proceeds arising from the sale of this land after he had acquired title? A. I did.

“Q. Will you tell us about the arrangements you had with him for the repayment of the money you had loaned him? [2301—1971]

“A. It was that conversation with regard to Mr. Waldman about dividing the proceeds, but he was to have a certain price for the land.

“Q. He was to have a certain price for the land?

“A. Yes, sir, I understand it was along that line.

“Q. You understand my question was reframed; he was to have a certain price for the land?

“A. Yes, sir.

“Q. I believe you are correct, he was to have four

(Testimony of C. W. Robnett.)

hundred dollars for the land, or that was his statement? A. Yes, sir.”

Did you so testify Mr. Robnett, on that occasion?

A. Yes, sir.

Q. And was that testimony true or untrue?

A. It was true.

Q. Did you not also testify as follows:

“Q. Well, give us your version of that transaction.

“A. Shortly before he proved up, he came to me or we met on the street and he stated that he would be unable to go ahead and make proof, that he wanted to know if I could arrange to get him the money to make proof with, and I told him that I thought so. I thought there would be no trouble about that, and so he wanted to know again what I thought the claim would bring. Well, I told him considering the location and everything, that I thought without any question, after all expenses were deducted, that there ought to be at least calculation between four or five hundred dollars in it for him. ‘Well,’ he says, ‘If I can get four hundred dollars for that claim, I will be satisfied,’ and I says, ‘I don’t think there is any question but what you can get that amount for it.’ ‘Well,’ he says, ‘if you think it can be disposed of all right, go ahead, and make the arrangements for me to get the money.’ [2302—1972]

“Q. Did you have any arrangement or understanding with him whereby he was to secure you for the money, or anything of that kind?

“A. Yes, sir, I told him I would go ahead and advance the money for the proof, and after he proved

(Testimony of C. W. Robnett.)

up, he placed a deed in escrow in the bank to secure me for the money advanced, and when the claim was sold, why he should pay me back the money that I had advanced and my location fee.

“Q. Did you have at this time, at the time of proving up, any interest in this land that he acquired?

“(Question withdrawn.)

“Q. From the conversations that you had had with Mr. Waldman, did you have any understanding or did you understand that you were to acquire any interest in this land by the fact that the receiver's receipt was issued to him? A. No, sir.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. And was that testimony true or untrue?

A. It was untrue.

Q. And you knew it was untrue at the time, did you? A. Yes, sir.

Q. Did you also testify:

“Q. Did you afterwards become the owner of this land?

“A. Perhaps a month or six weeks or such a matter, maybe longer, perhaps it was two months; somewhere along in that neighborhood I did.

“Q. Tell us the circumstances under which you acquired title to the lands.

“A. Well, after the proof, Mr. Waldman placed a deed in escrow in the bank.

“Q. What did he do with the receipt? [2303—1973]

“A. The receipt was placed there also with the deed, and a week or two afterwards, after that, why

(Testimony of C. W. Robnett.)

he had a talk stating that—

“Q. Who did he have the talk with?

“A. We had a talk stating that he would like very much to get some money out of that as his bills in regards to his house were crowding him, and wanted to know if I had been able to get any buyer for it, and I told him not so far, but I was talking the matter up with the timber companies, and seeing if they wanted to buy in that section at the present time. ‘Well,’ he says, ‘Can you, if you don’t make a disposal of it in a week or two, will you be able to let me have a little bit more money?’ and I asked him how much he wanted, and he says, ‘\$100,’ and I said, ‘I guess so. Well, yes, perhaps in that time the claim may be disposed of and you can get the total amount of money,’ but in the end of a couple of weeks or such a matter, there had not been any disposition of the claim, and I let him have \$100 and then a little later on I accepted an order on me to one of the lumber companies for \$150, I believe.

“The COURT.—Whose order?

“A. An order from one of the lumber companies on me, Waldman’s order, stating that he would or this order was dated thirty or sixty days in order to obtain more time, but they would not.

“Q. You say it was dated thirty or sixty days?

“A. Yes, sir. It was to run, or it was really what you might say a due-bill or order, to be paid thirty or sixty days in the future, the time was about up for the lumber people to file a lien, and in order to prevent them from filing a lien, he had to give some

(Testimony of C. W. Robnett.)

security in regards to a bill due them, and I told him in order to protect him and keep the lien from being filed on his building, I would accept an order for \$150. The order was made out and sent to me, and I accepted it [2304—1974] and returned it, so that prevented any lien from being filed then, and the time was so that he would have a chance to dispose of the claim, he was to use his best endeavors to make a disposition of the claim, as well as myself; so that at the end of six weeks or two months after proof he wanted to know if I wouldn't take the claim. I considered it a good buy, and I told him yes, I would take it at \$350.00 instead of \$400, above what was really coming to me out of the claim. He says, 'All right, in order to close up the deal I will take your proposition.'

“Q. Do you remember the face value, the amount of this order that he drew upon you and you accepted? A. It runs in my mind it was \$150.”

Did you so testify? A. Yes, sir.

Q. And was that testimony true or untrue?

A. It was partly untrue.

Q. And you knew it was untrue at the time, did you? A. Yes, sir.

Q. Did you not also testify as follows:

“Q. Mr. Robnett, from your conversation with Mr. Waldman and your connections with him, did you understand that you were to have any interest in the land after he had acquired title? A. No, sir.”

Did you so testify? A. Yes, sir.

Q. Was that answer true or false? A. False.

(Testimony of C. W. Robnett.)

Q. And you knew it was false at the time you made it, did you? A. Yes, sir.

Q. Did you not also testify as follows, Mr. Robnett:

“Q. Returning now for just a moment to the notes for the location [2305—1975] fee, and the estimation fee, that were given to Curtis Thatcher. The testimony is to the effect that \$100 was for location fee, and \$25 was for an estimation of the land. Will you explain to us now what that estimate was, and what it was for?

“A. Well, Mr. Thatcher wanted to know something of the character of the timber on the land, also about what the claims would go.

“Q. What do you mean by what the claims would go?

“Q. How much timber they would get or whether it would be one million or a million and a half or two millions.

“Q. A million feet of saw timber, you mean?

“A. Yes, sir; to each quarter section, or each claim, and to ascertain that, of course, the cruisers or locators would have to spend a little bit more time on each claim in order to give an idea of the amount of timber that was on each claim that he was to take a mortgage on.

“Q. Do you mean an idea or a detailed statement?

“A. Detailed statement.

“Q. And this is what the estimation fee was?

“A. Yes, sir.

“Q. Mr. Robnett, are you acquainted with P. H.

(Testimony of C. W. Robnett.)

Waldman? A. I am.

“Q. Did you hear his testimony while he was testifying as a witness in this case? A. I did.

“Q. Did you hear his testimony to the effect that you had told him that it was not necessary for an entryman, a stone and timber entryman, to go upon the land before he filed his sworn statement, or before making a filing? A. I did.

“Q. Did you make any such statement as that to Mr. P. H. Waldman?

“I did not. [2306—1976]

“Do you know where Mr. P. H. Waldman got his filing papers? A. I think at Nickerson’s office.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. Was that testimony true or false?

A. It was partly untrue.

Q. And you knew it was untrue at the time, did you? A. Yes, sir.

Q. And did you also testify:

“Q. Did you hear the testimony of Louis Dreckman? A. I did.

“Q. Did you hear his testimony to the effect that you told him and some of the Waldmans, brothers-in-law of his, that it was advisable to take a trip up the line so that he could make an appearance of having gone onto the land? A. I did.

“Q. Did you ever make any such statement as that to Dreckman? A. I did not.

“Q. Did you ever make any such statement as that to any of the Waldmans? A. I did not.

“Q. Did you ever make any such statement as that

(Testimony of C. W. Robnett.)

to anybody? A. I did not.

“Q. Who first placed you in connection with the Waldmans and Dreckman in relation to this transaction about which you testified?

“A. A. L. Rainwater.

“Q. Do you know whether or not Mr. A. L. Rainwater went out with Dreckman and the Waldmans when they went out and when they made the trip up the line?

“A. I believe he did. It would be hearsay, is all I know; I was not at the train. [2307—1977]

“Q. Do you know who requested Mr. Rainwater to go with the Waldmans and Dreckman?

“A. The Waldmans, yes, sir.

“Q. Tell us whether or not you requested Mr. Rainwater to take them out on this trip. A. I did not.

“Q. Do you know whether or not Mr. Rainwater had been upon the land the Waldmans were intending to file upon? A. No.

“Q. Had you any conversation with Mr. Rainwater about the Waldmans and Dreckmans desiring to take claims? A. I had.

“Q. Did you have any conversation with the Waldmans and Dreckman about their taking timber claims? A. I had.

“Q. Which conversation did you have first, the conversation with Rainwater or the conversation with the Waldmans?

“A. The conversation with Mr. Rainwater.

“Q. Do you remember, Mr. Robnett, of hearing as a circumstance that the Waldmans and Dreckman

(Testimony of C. W. Robnett.)

had gone out into the timber? A. Yes, sir.

“Q. Do you remember of having a conversation with them after they started upon this trip and before they had filed upon the land? A. No, sir.”

Did you so testify? A. Yes, sir.

Q. Was that testimony true or untrue?

A. It was partly untrue.

Q. And you knew it was untrue at the time, did you? A. Yes, sir. [2308—1978]

Q. Did you not also testify as follows:

“Q. Are you acquainted with the handwriting of John E. Nickerson? A. I am.

“Q. Will you look at Plaintiff’s Exhibit 76-E, J. E. B., and tell us whose handwriting the written portion of that note is in?

“The COURT.—What note is that, Mr. Moore?

“Mr. MOORE.—The \$125 Ferris note that was given for the location fee to Curtis Thatcher.

“A. It is in the handwriting of Mr. Nickerson.

“Q. Will you turn to the face of the note which you hold in your hand (Plaintiff’s Exhibit 76-E) and tell us if you know who placed the ‘paid’ stamp upon that note? A. I did.

“Q. What did you place that there for, Mr. Robnett?

“A. Why, when the other note was given and the mortgage this note was paid and taken up, and included in that other note.

“Q. Mr. Robnett, when did you first see or get possession of that note which you now hold in your hand, being Plaintiff’s Exhibit 76-E?

(Testimony of C. W. Robnett.)

“A. The first time was when Mr. Nickerson brought that over to the bank after the filing.

“Q. What did you do with the note after Nickerson brought it to you?

“A. I took it over to Mr. Thatcher and got the money on it.

“Q. Did you ever get that note from Mr. Thatcher after that? A. I did.

“Q. About when?

“A. About the time of the proof.

“Q. How did you get it?

“A. I went on over and paid Mr. Thatcher his money and took up the note. [2309—1979]

“Q. What did you do with the note after you got it from Mr. Thatcher?

“A. I kept the note in my possession until I got the other papers made out.

“Q. What other papers?

“A. The mortgage and note.

“Q. Whose mortgage and note?

“A. The mortgage and note on the timber claim for the money advanced. The \$725 or \$727.75, or whatever the amount is.

“Q. Whose mortgage and note?

“A. The mortgage and note of Bertsell H. Ferris.

“Q. Do I understand you to say that at the time Mr. Bertsell H. Ferris gave you the note for the \$727.75, which was secured by a mortgage, you returned this note to him? A. I did.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. Was that testimony true or untrue?

(Testimony of C. W. Robnett.)

A. True.

Q. Did you not also testify, Mr. Robnett, as follows:

“Q. Mr. Robnett, when you took up that note from Mr. Thatcher were you acting for yourself personally or acting in the interests of the bank?

“A. Acting for myself personally.

“Q. And you say that you placed the bank's stamp upon the note at the time you surrendered it back to Mr. Ferris? A. I did.

“Q. For the purpose of showing that the note had been paid? A. I did. [2310—1980]

“Q. Did you place that upon the face of the note for the purpose of showing that the bank owned any interest in the note? A. No, sir; I did not.

“Q. Did you place it upon the face of the note for the purpose of showing the interest of any person in the note? A. No, sir.

“Q. From the time that you had received that note from Mr. Curtis Thatcher, had you ever entered into any negotiations with the Lewiston National Bank with reference to the note? A. No, sir.

“Q. Was the note yours when you returned it to Ferris? A. Yes, sir.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. And was that testimony true or false?

A. It was partly untrue.

Q. And you knew it was untrue at the time, did you? A. Yes, sir.

Q. Did you not also testify as follows:

“Q. Mr. Robnett, did you hear the testimony of

(Testimony of C. W. Robnett.)

Mr. P. H. Waldman to the effect that he gave you a \$300 note to cover the location fee of himself and his wife upon a couple of claims? A. I did.

“Q. Is this the note, Mr. Robnett, that Mr. Waldman gave you at that time? A. It is.

“Q. I am referring now to Plaintiff’s Exhibit 83, J. E. B. Will you tell us, Mr. Robnett, who placed this ‘paid’ stamp of the Lewiston National Bank upon the face of Plaintiff’s Exhibit 83, if you know? [2311—1981] A. I did.

“Q. When did you place that stamp upon the face of that note? A. When?

“Q. Just prior to taking the note up to him, and surrendering the note over.

“Q. After receiving the note from Mr. Waldman, what did you do with it, if anything?

“A. I believe I put it up as collateral against some money I borrowed.

“Q. In the bank? A. Yes, sir.

“Q. In the Lewiston National Bank?

“A. Yes, sir.

“Q. How did you obtain possession of it after you had put it up in the bank?

“A. I really don’t remember the circumstances now. It was by satisfying the officials of the bank in regard to my indebtedness without this note as security.

“Q. Now, how did you recover it from the bank, the possession of it?

“A. Why, I simply went and got the note.

“Q. Was it your note at the time you returned it

(Testimony of C. W. Robnett.)

over or returned it to Mr. Waldman?

“A. Yes, sir.

“Q. At that time did the Lewiston National Bank own any interest in it? A. No, sir.

“Q. Did the Lewiston National Bank have any connection in any way, shape or form with your transaction with Waldman the maker of that note? I think it is P. H. Waldman. A. No, sir. [2312—1982]

“The COURT.—Is that note payable to you?

“A. Yes, sir; this note is payable to myself.”

Did you so testify? A. Yes, sir.

Q. Was that testimony true or false? A. True.

Q. Did you not also testify:

“Q. Mr. Robnett, have you ever been associated or in any way connected in any transactions pertaining to Government lands with Edward M. Lewis?

“A. No, sir.

“Q. Or Hiram F. Lewis? A. No, sir.

“Q. Or Guy L. Wilson? A. No, sir.

“Q. Or Charles Carey? A. No, sir.

“Q. Or Francis A. Justice? A. No, sir.

“Q. Or J. B. West? A. No, sir.

“Q. Or I. N. Smith? A. No, sir.

“Q. Or Jackson O’Keefe? A. No, sir.

“Q. Or C. W. Colby? A. No, sir.

“Q. Or Fred Emery? A. No, sir.

“Q. Or Melvern C. Scott? A. No, sir. [2313—1983]

“Q. Or Edwin Bliss? A. No, sir.

“Q. Or J. H. Steffee? A. No, sir.

(Testimony of C. W. Robnett.)

“Q. Have you ever entered into any understanding, arrangement, agreement or conspiracy or combination with any of these persons whom I have named for the purpose of acquiring title to Government lands by making false or fraudulent entries?

“A. I have not.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. And was that testimony true or false?

A. Only as I have associated with Kester and Kettenbach.

Q. Did you not also testify as follows:

“Q. Have you ever had any such understanding, arrangement, agreement, conspiracy or combination with Edward L. Knight, W. B. Benton, or either of them or any other person to acquire the title to Government lands by reason of false or fraudulent entries? A. No, sir.

“Q. I will ask you the same question, Mr. Robnett, have you ever at any time been connected in any way, manner or form in any transaction with William Dwyer? A. No, sir.

“Q. Have you ever at any time been connected in any way, manner or form with George H. Kester, in any of his land or timber dealings? A. No, sir.

“Q. Have you ever in any way, manner or form been connected with W. F. Kettenbach in connection with any of his land or timber land dealings?

“A. No, sir. [2314—1984]

“Q. Have you ever at any time been connected with any transaction by which George H. Kester and William F. Kettenbach acquired a joint interest in

(Testimony of C. W. Robnett.)

any lands, whether timber or otherwise?

“A. None, except that selling them that claim, is all.

“Q. That one 160 acres? A. Yes, sir.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. And was that testimony true or untrue?

A. It was untrue.

Q. And you knew it was untrue at the time, did you? A. Yes, sir.

Q. Did you not also testify:

“Q. Mr. Robnett, I want to ask you one question, or two about what part you took in the recording of instruments in Nez Perce County which are recorded for the Lewiston National Bank, or are recorded by or at the request of the Lewiston National Bank for people leaving the deeds, mortgages or other conveyances there for that purpose?

“A. I generally took them up to the courthouse at the noon hour, and placed them on record.

“Q. With reference to the courthouse, what direction do you go from the bank in going to your home?

“A. Right by the courthouse, right in front of it.

“Q. The courthouse, then, is between your place of residence and the bank? A. Yes, sir.”

Did you so testify? A. Yes, sir.

Q. And was that true or false?

A. It was true. [2315—1985]

Q. Did you not also testify:

“Q. Now, Mr. Robnett, I want you to describe in a way the bank building and the location of the offices or quarters of the Lewiston National Bank. Do you

(Testimony of C. W. Robnett.)

know what streets the building is located on?

“A. Why, it is located on Main and Third or Fourth, I don’t know which.

“Q. How many stories high is it?

“A. Three stories.

“Q. Do you know how many feet or about how many feet front on Main street?

“A. No, sir, I don’t.

“Q. About how many feet does it front on Third or Fourth street?

“A. I think it is about one hundred or one hundred twenty-five feet.

“Q. Do you know what the street running immediately north of it is named?

“A. No, sir; I don’t.

“Q. Do you know whether or not it runs from street to street, north and south? A. It does.

“Q. It faces then upon the street? A. Yes, sir.

“Q. With reference to the ground floor on the first store, in what portion is the bank or banking room?

“A. Why, it is in the southwest portion of it.

“Q. The banking room or the directors’ room?

“A. No, the directors’ room would be in the northwest portion.

“Q. Now, how many doors are there leading from the banking room proper and I mean the room in which the employees are stationed and the banking business is conducted and carried on into the directors’ room? [2316—1986] A. One.

“Q. Now, what rooms, if any, what other rooms if any open off of the directors’ room?

(Testimony of C. W. Robnett.)

“A. There isn’t any.

“Q. Inside is there a toilet in connection with the directors’ room? A. Yes, sir; a toilet.

“Q. Where do the employees leave their wraps, their outer garments, overcoats, hats and rubbers?

“A. In the toilet.

“Q. What other means of ingress and egress, into the directors’ room is there, what other door, if any?

“A. Why, into the hall.

“Q. Now, what hall do you refer to?

“A. The hall that leads upstairs.

“Q. Upon which street is this? Upon which side of the building is this hallway that leads upstairs?

“A. Third or fourth.

“Q. Do you mean it is a little opening or hall at the foot of the stairs? A. Yes, sir.

“Q. What other door opens from this little hallway into the main banking-room?

“A. It opens into the lobby.

“Q. To the main banking-room?

“A. To the main banking-room.

“Q. About how wide is this hall?

“A. Why, it is about six or eight feet.

“Q. Now, upon the second floor, how much of a hall is there at the head of the stairs?

“A. It is quite a large hall, runs clear around.

“Q. How are the rooms occupied there? [2317—1987] A. At the present time?

“The COURT.—Do you mean now?

“Mr. MOORE.—Yes, I don’t mean the particular individuals, but I mean the room, whether they are occupied as offices or private rooms.

(Testimony of C. W. Robnett.)

“The COURT.—Oh, yes; very well.

“A. Yes, offices.

“Q. Where does the stairway go up to the third floor?

“A. Right from the hallway, in the east end of the building.

“Q. How is the third floor occupied?

“A. By offices.

“Q. Do you remember the time that the land office was located in that building? A. I do.

“Q. What floor was the land office located upon?

“A. The second floor.

“Q. In what part now of the second floor, relative to the floor plan? A. The southwest corner.

“Q. Immediately over the banking-room of the bank?

“A. Yes, sir; it would be over the west portion of the banking-room.

“Q. Did it run around over the east portion of the banking-room too? A. No, sir.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. Was that testimony true or false? A. True.

Q. Did you not also testify on that occasion, on cross-examination by Mr. Ruick, as follows:
[2318—1988]

“Q. Are you the same Clarence W. Robnett who last term of court in this district, sitting here at Moscow, in November last, was tried and convicted upon an indictment charging you with subornation of perjury? A. Yes, sir.

“Q. Mr. Robnett, what timber claims do you own?

(Testimony of C. W. Robnett.)

Have you got any, can you name the claims in the township they are in, Mr. Robnett?

“A. There are two claims in 39-3.

“Q. The names?

“A. W. B. Benton, in township and range 39-3, that is two claims that are in 39-3, section 15, I believe.

“Q. Mr. Benton and who else?

“A. J. H. Benton.

“Q. The same section, township and range?

“A. Yes, sir; two claims in 39-2 east. Robert O. Waldman and Ed Gordon.

“Q. 38 what?

“A. 38-2, east, section 30; that is one of them, is classed as some lots. Ed L. Knight, Nettie Knight and Minnie Harrington, Nellie Harrington, all of section 35, township 34-5 east.

“Q. Now just name those over.

“Mr. JOHNSON.—The Harringtons and Knights.

“A. Minnie Harrington and Nellie Harrington.

“Q. And those are in section 35, what township and range? A. 34-5 east.

“Q. To whom did you sell the Mattie and Joel R. Benton claims?

“A. I believe the deed was made out to Jo Malloy or Mr. Flewelling; at any rate it was sold through Jo Malloy.

“Q. Then, deeded to you, Mattie Benton and her husband deeded to you? [2319—1989]

“A. Yes, sir.

“Q. You say Joel H. Benton did not complete or

(Testimony of C. W. Robnett.)

obtain title to his homestead which he squatted on up there under his arrangement with you?

“A. Yes, sir.

“Q. He didn’t complete that?

“A. No, sir, he did not.

“Q. As a matter of fact, that homestead was on school land, wasn’t it, it turned out to be on school land? A. It was.

“Q. What section, 16 or 36?

“A. I think it was 36.

“Q. 36, that is the real reason isn’t it why he did not complete his proof? A. No, sir; no, sir.

“Q. Nevertheless it was a school section?

“A. Yes, sir; but that did not prevent him from going ahead.

“Q. That did not prevent him going ahead as a homestead?

“A. When was this you took the advice of I. Smith relative to the time that Mrs. Harris and the others came down from the timber?

“A. Shortly before, a few days.

“Q. Shortly before they came down?

“A. A few days. Before the conversation in the Beehive.

“Q. I want to know whether this conversation or the advice you took from Mr. Smith, whether that occurred before or after Mrs. Harris and the others came down from the timber?

“A. It was after they came down.

“Q. That is right. Now, you say that Mr. Smith told you not to have anything more to do with it at

(Testimony of C. W. Robnett.)

all? [2320—1990] A. Yes, sir.

“Q. That it would land you in the penitentiary?

“A. Yes, sir, not that it would land us there, but would lay the doors open.

“Q. It was a penitentiary offense?

“A. An offense, yes, sir; it was a violation of the law.

“Q. And you communicated this fact to Mrs. Harris, I believe? A. Yes, sir.

“Q. And also to Mr. Benton? A. Yes, sir.”

Did you testify as I have read the questions and answers to you, Mr. Robnett?

A. Yes, sir.

Q. And was that testimony true or false?

A. It was true.

Q. Did you not also testify as follows:

“Q. And as a matter of fact you wanted this homestead claim that Mrs. Harris had squatted on, you wanted it for your wife, didn't you?

“A. Does that question mean that was one of the reasons I broke up the agreement?

“Q. I am asking you the questions, you are not your own lawyer on this occasion, just simply answer the question, Mr. Robnett.

“A. Yes, sir; when I paid Mr. Smith for the location and for the building of that cabin it was for my wife, and after I found out there would be some time before she could file, then this agreement was entered into with Mrs. Harris and Mr. Benton, whereby Mrs. Harris was to have, and I did not intend the claim to be for my wife until this conversa-

(Testimony of C. W. Robnett.)

tion which I had with Mrs. Harris.

“Q. Were you married at this time that you speak of? A. I was. [2321—1991]

“Q. Well, how did you expect your wife to take this homestead, then?

“A. Why, she would take it as a stone and timber.

“Q. That is it? A. Yes, sir.

“Q. You changed your mind and had Mrs. Harris go on then so as to hold it down?

“A. Well, when she went on it it was with the understanding she should file a homestead on it.

“Q. It was the line she would hold it down and file a homestead on it? A. Yes, sir.

“Q. And you had given over the idea of wanting it for your wife? A. I had.

“Q. And you did not revive that idea later on, did you?

“A. Not at all, but to protect my interest—

“Q. Later on this conversation that you have testified to, that you had with Mrs. Harris, I don't care where it occurred, whether in the Beehive or elsewhere, in which you gave her the description of the timber and stone claim she could file on, you recall the conversation and the incident, don't you?

“A. Yes, sir.”

Did you so testify, Mr. Robnett?

A. Yes, sir.

Q. And was that testimony true or false?

A. It was true.

Q. Did you also testify:

“Q. And Mrs. Harris told you she would not file

(Testimony of C. W. Robnett.)

on any timber and stone claims except on this land, didn't she?

"A. No, not exactly those words. [2322—1992]

"Q. Not exactly those words; didn't she refuse to file on this land which you handed her a description of? A. Yes, sir.

"Q. And didn't she say she was going to file on this homestead, going to have this homestead?

"A. Yes, sir, she said she was going to file, but did not say a timber and stone.

"Q. And didn't you in that conversation say she should not have that homestead, you were going to have it for your wife? A. Yes, sir.

"Q. And you stated it in that conversation?

"A. Yes, sir.

"Q. This was after you had been advised by Mr. Smith to give the whole thing up? A. Yes, sir.

"Q. You still wanted it for your wife?

"A. Yes, sir.

"Q. Was this the conversation with Mrs. Harris, Mr. Robnett, in which you mentioned the penitentiary to her if she attempted to file on this land, on this homestead?

"A. I didn't mention the penitentiary, if she attempted to file on the homestead.

"Q. Did you mention the penitentiary in that conversation? A. I did.

"Q. In what way did you mention penitentiary in that conversation?

"A. I mentioned penitentiary in view of the fact that if we went ahead with our agreement, we would

(Testimony of C. W. Robnett.)

place ourselves in danger of the penitentiary.

“Q. She didn’t want to go ahead at that time, did she?

“A. Yes, sir; she wanted to go ahead; she wanted to go ahead with the agreement. [2323—1993]

“Q. She wanted to go ahead with the agreement?

“A. Yes, sir.

“Q. You didn’t want her to go ahead with the agreement at that time?

“A. No, sir; I did not.

“Q. And she told you absolutely and positively she was going to have it for herself and would not turn it over to you?

“A. Not until after I told her she could not have it.

“Q. And she told you it could not go into the pool?

“Mr. MOORE.—When?

“Q. In this conversation at this time, refused to carry out the agreement?

“A. No, I do not recollect any mention of that at all.

“Q. After she refused to carry out that agreement you said you were going to have that for your wife, you told her so?

“A. I don’t say she refused. As I remember it, she made a statement that she was going to have that claim.

“Q. For herself alone?

“A. She said she was going to have that claim for herself, but there was nothing stated in regard to

(Testimony of C. W. Robnett.)

the agreement.”

Did you so testify, Mr. Robnett, as I have read to you? A. Yes, sir.

Q. Was that testimony true or false?

A. It was true.

Q. Did you not also testify:

“Q. This homestead, this land you wanted for your wife, Mrs. Harris later filed her homestead on it, didn’t she? A. Yes, sir.

“Q. And that is the same homestead which was contested by Ralph Chapman, isn’t it?

“A. Yes, sir; the same one. [2324—1994]

“Q. And Ralph Chapman’s brother was an employee of the Lewiston National Bank at the time that contest was filed, wasn’t he? A. Yes, sir.

“Q. Referring now to Bert Chapman?

“A. Yes, sir.

“Q. Mr. Robnett, when did you say that the first talk was between you and Robinson and Ferris relative to the money to prove up and pay for these claims, and pay the expenses of obtaining them?

“A. It was at my home.

“Q. Who was present when this conversation occurred?

“A. Well, during the time there was Mr. Ferris and Robinson and Benton and my wife in and out through the room and myself.

“Q. Who was present when the conversation occurred as to where the money was to be procured, and how?

“A. Mr. Robinson and Mr. Ferris, and I believe

(Testimony of C. W. Robnett.)

Mr. Benton was there.

“Q. You are not sure about Mr. Benton being there at that time?

“A. Why, it might have been mentioned before, but it was mentioned during the time he was there also.

“Q. You are positive of that? A. Yes, sir.

“Q. You don’t think you could be mistaken about Benton being there when that conversation relative to the money went on?

“A. No, I don’t think so.

“Q. If Mr. Benton was there at this time, was he where he could have heard the conversation do you think? A. He was in the room.

“Q. He was in the room where he could have heard the conversation, if any such had occurred?

“A. Very likely; yes, sir.” [2325—1995]

Did you so testify, Mr. Robnett?

A. Yes, sir.

Q. Was that testimony true or false?

A. It was true.

Q. Did you not also testify as follows:

“Q. I want to get at it how large a room was it you were in?

“A. Perhaps sixteen by sixteen and one-half.

“Q. Mr. Benton was up there on this same business? A. Yes, sir.

“Q. And you were talking it over among yourselves? A. Yes, sir.

“Q. You say that Mr. Benton went into the dining-room with you and called off the description

(Testimony of C. W. Robnett.)

from the map as you wrote it down? A. Yes, sir.

“Q. You are positive on that point too?

“A. Yes, sir.

“Q. Were the boys in the same room, Robinson, and Ferris?

“A. I don't say they went into the dining-room; we were in the dining-room at the time of the conversation, but we returned to the dining-room table and read off the description.

“Q. This was when all four of you were there?

“A. Yes, sir.

“Q. It could not have been in the kitchen or the kitchen table? A. No, sir.

“Q. It was the dining-room table? A. Yes, sir.

“Q. You are positive of that? A. Yes, sir.

“Q. You and Ed Knight, your brother in law and Mr. Benton formed a partnership as though locators, didn't you, timber locators? [2326—1996]

“A. We had an agreement in regard to locating.

“Q. An agreement to share the profits?

“A. Yes, sir.

“Q. And losses and so forth? A. Yes, sir.

“Q. What was the object and purpose of this firm?

“A. It was for the location of people on timber claims.

“Q. What do you understand constitutes locating people on timber claims for a consideration?

“A. Obtaining the numbers of the claims and making another party acquainted with the facts of where they can obtain a timber claim that they can file upon.

(Testimony of C. W. Robnett.)

“Q. In that sense, you were a locator yourself, weren’t you? A. Yes, sir; in one sense.

“Q. In that sense? A. Yes, sir.

“Q. You did not include, then, among the locator’s duties the showing to people or pointing out the corners of the land, and the lines of the survey, and taking people around over the land? You did not consider that a locator’s duty necessarily?

“A. No, it is not, necessarily.

“Q. According to your view of the locator’s business a man could stay around in Lewiston, couldn’t he, and hand out numbers and descriptions to people, and perform his duty thus as a locator?

“A. Make them acquainted with the process in which they could go and see the claims, that is, give them the description of the way, to make them acquainted with the facts.

“Q. Any locator could stay right there in Lewiston and say to them this is in 39-5, and you take the train up to Orofino and you take a rig and go in there and look at the timber and come back and [2327—1997] you will consider the locator had discharged his duty, would you?

“A. Not necessarily so.

“Q. But you reverse my question. You say not necessarily. It is not necessary for a locator in the performance of the duty to take people on the land at all?

“A. Not if they can go on there without his assistance.

“Q. But suppose they do not know anything about

(Testimony of C. W. Robnett.)

surveying as many people do not know anything about the corners of surveys or the marking. Do you mean to say a locator would be justified in charging a location fee where he did not show people around on the land and point out the corners of the land?

“A. It would be his duty then to show them the land.

“Q. What is that?

“A. It would be his duty then to show them the land.”

Did you testify on that occasion as I have read, Mr. Robnett? A. Yes, sir.

Q. Was that testimony true or untrue?

A. It was true.

Q. Did you also testify as follows:

“Q. You have heard the proceedings in this trial from this commencement, haven't you?

“A. Not entirely. I have not been in attendance all the while.

“Q. You have heard counsel ask the witnesses—were you here when the jury were empaneled?

“A. No, sir.

“Q. You have had more or less to do with the timber business and you realize, don't you, the extreme difficulties, don't you, that a person unaccustomed to the woods would have in finding the corners of a public survey and the lines and placing the lines and so forth; you appreciate that difficulty, don't you? [2328—1998]

“A. In some cases it would be difficult, yes, sir.

(Testimony of C. W. Robnett.)

“Q. In nearly all the cases in the woods it is pretty difficult, isn’t it, to find the corners?”

“A. No, not in all cases.

“Q. If people who had to be shown the corners of the land, people who are totally unacquainted with these things, if they do not have to be shown the land, what is the necessity for a locator?”

“A. Why, it is not everyone who can get the knowledge relative to what claims are good to file upon.

“Q. That is right; that is true. They would have to get somebody who knew something about that?”

“A. Yes, sir.

“Q. But that would be more the duty of an estimator than that of a locator, wouldn’t it?”

“A. Not necessarily.”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. Was that testimony true or false?

A. True.

Q. Did you not also testify as follows:

“Q. I will ask you one more question: What do you mean in that connection by ‘not necessarily’? Explain yourself.

“A. Well, in order to obtain this knowledge a person has to go out in the timber, run the lines, and find out where the subdivisions are, and where it is to the best advantage to take up a claim, and have it mapped out, so that he can convey this news to anyone, and if the party can go and see the timber without being taken there by the locator, it is not

(Testimony of C. W. Robnett.)

necessary for him to go, but if he cannot, why, it would be part of the locator's duty to show him the timber. [2329—1999]

“Q. What was your understanding when you charged \$100 location fee; what did you understand you were charging that for?

“A. For giving the numbers of the land, and seeing that the parties had a chance to see the land.

“Q. Who got the \$200 bonus in the Robinson and Bertsell Ferris transaction? A. I don't know.

“Q. It was charged in the note? A. Yes, sir.

“Q. Did you get any part of it?

“A. No, I did not.

“Q. Not a thing? A. No, sir.

“Q. How much did you make out of the transaction?

“A. Nothing but the location fee, my portion of the location fee.”

Did you so testify, Mr. Robnett?

A. Yes, sir.

Q. And was that testimony true or false?

A. It was partly untrue.

Q. And you knew it was untrue at the time, did you? A. Yes, sir.

Q. Did you also testify as follows:

“Q. You got how much location fee out of these boys?

“A. \$125. That is, with the estimating fee, as you know.

“Q. And they were not shown the land, either to your knowledge, that is right, isn't it?

(Testimony of C. W. Robnett.)

“Mr. MOORE.—If you know of your own knowledge.

“A. No, sir; not of my own knowledge.

“Q. You, as a member of the firm, whatever the firm name was, understood the boys had never seen the land, didn't you? Haven't you so [2330—2000] testified? A. Not except from hearsay.

“Q. The information and knowledge came to you as a member of that firm, interested in that \$125 fee, that these boys had never been on the land?

“A. Yes, sir.”

Did you so testify? A. Yes, sir.

Q. Was that true or was it false?

A. It was partly untrue.

Q. And you knew it was untrue at the time, didn't you? A. Yes, sir.

Q. Did you not also testify as follows:

“Q. Now, when this arrangement with Curtis Thatcher failed to go through, you took the matter up then with Mr. Kettenbach, didn't you?

“A. Not at once, no, sir.

“Q. What? A. Not at once.

“Q. You took it up in time so that the boys could get their money there?

“A. I broached the subject to him, yes, and told him of the land.

“Q. Of course, you told the boys when you made out this note, this \$728.75 note; of course, you explained carefully to the boys what that \$200 was in there for, didn't you?

“A. I couldn't say whether it was gone into at the

(Testimony of C. W. Robnett.)

time. It was gone into at the time the arrangements for the money was made.

“Q. At the time the arrangements for the money were made with Mr. Kettenbach?

“A. Were made at my house. [2331—2001]

“Q. No, I am speaking of the time you made arrangements to get the money from Mr. Kettenbach; was the matter then talked over with the boys? When did you assign this note to Mr. Kettenbach, this note and mortgage relative to the time it was executed?

“A. Why, some little time after; it might have been some days.

“Q. You took the mortgage the same day the boys made final proof, didn't you?

“A. I could not say as to that; it was near that time.”

Did you so testify? A. Yes, sir.

Q. Was that testimony true or false?

A. Partly untrue.

Q. And you knew it was false at the time you gave it, did you? A. Yes, sir.

Q. Did you not also testify:

“Q. Now, you took this mortgage, of course, to protect yourself; that is what you took it for, for moneys which you had advanced?

“A. Yes, sir.

“Q. Now, you didn't endorse this right away immediately over to Kettenbach?

“A. No, I did not.

“Q. Explain to us why it was you endorsed that

(Testimony of C. W. Robnett.)

note without recourse. Why did you want to get shut of this transaction?

“A. Why, the land was security enough for the obligation, and I had no further dealings with it.

“Q. And you didn’t want to be responsible for it?

“A. No, sir.

“Q. As a matter of fact, the whole affair was Kettenbach’s, and you wanted to get out from under, didn’t you, just as quick as you could?

“A. No, sir. [2332—2002]

“Q. That is not the reason. This transaction between you and Mr. Ferris, between you and Mr. Robinson, was, of course, a *bona fide* transaction, and you—wasn’t it?

“A. Yes, sir. The transaction was *bona fide*.

“Q. You are a banker, trained by experience in banking? A. I know something about banking.”

Did you testify as I have read to you, Mr. Robnett? A. I did.

Q. And was your testimony true or was it false?

A. It was partly untrue.

Q. Did you not testify as follows:

“Q. You understand banking? A. Yes, sir.

“Q. Where a party has signed a note over to another, it is not usual for the assignee of the note to permit the words ‘without recourse’ to be written under the endorser’s signature, is it?

“A. In some cases, yes, sir.

“Q. I ask you is it usual?

“A. It depends upon the transaction.

“Q. You can’t answer the question, then, whether

(Testimony of C. W. Robnett.)

it is usual for the assignee of a note to permit the endorser to write without recourse under his signature?

“A. In some cases, yes, sir, and in some cases not.

“Q. Are the words ‘without recourse’ written under the endorser’s signature more frequently than they are omitted?

“A. They are more frequently left off.

“Q. Explain to the jury what the words ‘without recourse’ meant when you put them under your name there. (Showing witness Plaintiff’s Exhibit 75-E.)

“A. When I placed them above my name?
[2333—2003]

“Q. Above your name?

“A. Yes, sir; why, it was to show that I have no further responsibility in regard to this loan. The loan has passed out of my hands as far as any responsibility I had with it was concerned.

“Q. To show to the future holders of the note they would have no recourse on you?

“A. Yes, sir; to show future holders that I had no responsibility or reliability on the note.”

Did you so testify? A. Yes, sir.

Q. And was that testimony true or was it untrue?

A. It was true.

Q. Did you not also testify:

“Q. Referring to the R. O. Waldman transaction, under the agreement between you, Waldman put a deed in escrow in the bank. A. Yes, sir.

“Q. And that deed was to you? A. Yes, sir.

“Q. And he never made out but one deed to you,

(Testimony of C. W. Robnett.)

did he? A. I think not.

“Q. That would be the 21st day of May, 1903 (reading from the record). I am making the statement, I don’t ask you for a rejoinder. I understood you to testify on direct examination that when the claim was sold, he repaid you the amount you had been out. Afterwards you stated how he received his pay. You did not succeed in making a sale of his claim, did you?

“A. Well, now, your statement, Mr. Ruick, there is a little contradictory to my evidence.

“Q. I think your evidence explains it all inasmuch as your first general statement, as I recall it, and noted it down was, that when the [2334—2004] claim was sold he repaid you the amount that you had been out?

“A. No, that was the understanding if the claim was sold, that he was to pay me.

“Q. But the claim was not sold; how much was it—how much did the claim have to be sold for in order to give Mr. Waldman his \$400 he was to have?

“A. Well, I could not answer that to the dollar for the reason that I don’t remember how much money he got for the land office or owed me for other matters, and it would be somewheres, I presume, in the neighborhood of \$900 or \$1,000—”

Did you so testify, Mr. Robnett? A. Yes, sir.

Q. And was that true or was it untrue?

A. It was partly untrue.

Q. And you knew it was untrue at the time, did you? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. Did you not also testify:

“Q. We will just take up, suppose it would be a 160 acre claim; you are very familiar with these facts, there would be \$400 for the land?

“A. \$400 for the land, and about \$11 for the land office fee.

“Q. A little more than that; the filing would be something.

“A. The filing fee would be about \$8 or \$9.

“Q. Something about \$420, and if he figured in his expenses going up to the claim that was—

“A. Something about \$25.

“Q. I am speaking of the money he would *have sell* it for.

“A. That was figured in there when we first talked of the claim; he wanted to get \$400 above what he would actually have in the claim.

“Q. \$400 and expenses. You say how much?

“A. \$25 or \$30, something about like that.

[2335—2005]

“Q. About \$400— A. And \$400 added onto it.

“Q. It would be about \$800, the claim would have to be sold for? A. And the \$100 location fee.

“Q. Your firm located him, your firm of locators?

“A. No, I located him individually.

“Q. You located him yourself? A. Yes, sir.”

Did you so testify, Mr. Robnett?

A. Yes, sir.

Q. And was that testimony true or false?

A. Partly untrue.

Q. And you knew it was untrue at the time, did

(Testimony of C. W. Robnett.)

you? A. Yes, sir.

Q. Did you not also testify as follows:

“Q. And he was to give you \$100 for it?

“A. Yes, sir.”

Did you so testify? A. Yes, sir.

Q. Was that answer true or was it false?

A. Untrue.

Q. And you knew it was untrue at the time, did you? A. Yes, sir.

Q. Did you not also testify:

“Q. Did he ever pay you the \$100?

“A. No, sir.

“Q. I believe it has already been testified to but I will ask *you* Mr. and Mrs. Knight are respectively brother and sister in law of yours, are they not?

“A. Yes, sir. [2336—2006]

“Q. And Mrs. Harrington, Minnie and Nellie are sisters of Mrs. Robnett? A. Yes, sir.

“Q. Those four in the family? A. Yes, sir.”

Did you so testify? A. Yes, sir.

Q. Was that true or untrue? A. It was true.

Q. And did you not also testify, on redirect examination by Mr. Moore, as follows:

“Q. Did you ever at any time talk with Mr. Dreckman’s wife about going into the timber to take a claim? A. I did not.

“Q. Did you ever talk at any time with the wife of R. O. and P. H. Waldman about taking claims?

“A. I did not.

“Q. Did you ever talk with the wife of Mr. Dreckman about taking claims? A. I did not.

(Testimony of C. W. Robnett.)

“Q. Did you ever talk with the wives of any of the Waldmans about taking claims? A. I did not.

“Q. Did you ever talk with the father and mother about taking claims?

“A. I might have talked with their father but not with their mother.”

Did you so testify? A. Yes, sir.

Q. Was that testimony true or untrue?

A. It was true. [2337—2007]

Q. Did you not also testify, on recross-examination by Mr. Ruick, as follows:

“Q. I will ask you to look at Plaintiff’s Exhibit 83, purporting to be the P. H. Waldman note to you, and ask you to state if it is in your handwriting, the body of the note? A. It is.”

Did you so testify? A. Yes, sir.

Q. Was that true or false? A. True.

Q. Mr. Robnett, do you remember of entering a man by the name of George G. James on a piece of land up in the Clearwater country?

Mr. GORDON.—That isn’t in suit.

Mr. TANNAHILL.—I know it isn’t in suit, but he testified concerning that contest of Dwyer’s.

Q. Do you remember of locating a man—

A. Yes.

Q. Do you remember that Mr. Dwyer contested that claim? A. He did.

Q. Do you remember that you went to Mr. Dwyer and told Dwyer that you had \$80.00 in that claim, and wanted him to withdraw his contest?

A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. And didn't Mr. Dwyer tell you that if you had \$80.00 in that claim that you was out of luck, that that fellow had never seen the land, never had had a cabin on the land?

A. No, that conversation didn't take place just that way.

Q. How did it take place?

A. I put Mr. James up there on this claim to hold it down. There was a cabin on there, and it was to be run over the state selection, it was to hold it beyond the state selection, and I was to go up there and file on this claim, and Mr. James had filed a homestead and was to [2338—2008] relinquish, and I was to file on it, and Mr. Dwyer filed a contest, and I spoke to Mr. Kettenbach about it, and he said that could be arranged and Mr. Dwyer would withdraw his contest, and for me to go on up and see the claim; and when I come back the contest was not withdrawn, and I went to Mr. Dwyer, and Mr. Dwyer said he wouldn't do anything, for me to take the matter up with Mr. Kester; and I went to Mr. Kester, and he said to let the matter run, and whatever they made out of that claim that he would see that I got my right proportion, that they didn't care to see Mr. Jensen make anything out of any timber, and Mr. Jensen and I were in together on that claim; and the matter was dropped, that contest was—they bought Mr. James off and a fellow by the name of Davenport was put on the claim.

Q. Is it not a fact that you went out on the street and got James to go up and get in line, then after

(Testimony of C. W. Robnett.)

he filed on the claim you had him go out and look at the claim?

A. I don't know in regards to the status, whether Mr. James had seen the claim prior to the time of filing or not, but anyway he went up there and stayed on the claim a certain length of time; but Mr. Dwyer contested it and put Mr. Davenport on—I believe it was Mr. Davenport,—while he was working in the railroad station; and through the request of Mr. Kester I let the matter rest, and I was to share in the profits, whatever was made out of that claim.

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Robnett, I think I either misunderstood a question that was asked you or misunderstood the facts. The question was asked you yesterday if, since those indictments were filed, you hadn't made up your mind to tell about the land transactions. I will ask you if you [2339—2009] didn't make up your mind and didn't you tell all about the land transactions before the grand jury met?

A. You are mistaken there. I mean—I stated the indictments, and then changed that to charges just prior to the meeting of the grand jury.

Q. You made up your mind to tell the Government all you knew about the land transactions between the time charges were filed against you and the time the grand jury met? A. Yes, sir.

Q. You have declined to answer a number of questions, on the ground of your constitutional privilege,

(Testimony of C. W. Robnett.)

or that they might tend to incriminate you. What cases had you in mind—the criminal cases or any land matters that you might be connected with?

A. It was the bank cases.

Q. Do you know how many indictments there are against you, Mr. Robnett?

A. In the bank matter?

Q. In the bank cases? A. In the bank matter?

Q. Yes—approximately. A. Why, five or six.

Q. Do you know with whom you are jointly indicted in those cases?

A. With Mr. Frank Kettenbach, and with Mr. Kester and Mr Will. Kettenbach.

Q. You were asked yesterday if Mr. Miles Johnson, who represented you in some matters, was not Assistant District Attorney when you were tried and when Kester and Kettenbach and Dwyer were tried in 1906 and 1907, and you were asked in the same question whether or not Miles S. Johnson wasn't an assistant in prosecuting the cases against Kester and Kettenbach and Dwyer at Boise last February. Now, did you intend to convey the impression in answering that question that he had been continuously [2340—2010] in the service of the Government?

A. No, sir.

Q. Do you know when Mr. Johnson's service as Assistant District Attorney ceased?

A. You mean the first time?

Q. Yes.

A. Yes; when Mr. Lingenfelter went into office.

Q. That was in July— A. 1908, I think.

(Testimony of C. W. Robnett.)

Q. 1908. And you know that he was employed specially to take part in the trial of Kester, Kettenbach and Dwyer, do you not? A. Yes.

Q. That he was employed in the middle of February, 1910? A. Yes, sir.

Q. And that that service ceased as soon as that trial was over? A. That is my understanding.

Q. Was there ever any agreement or arrangement between you and any employee or officer of the Government to the effect that anybody would be indicted? Was anybody's name mentioned relative to anybody being indicted in connection with the bank cases?

A. No; there never was any statement of who would be indicted at all. It was simply a presentation of the matters before the grand jury, and they could not tell who would be indicted; that was a matter for the grand jury to consider.

Q. And all that you asked was that the matters be impartially investigated? A. Presented.

Q. I think that you stated that one of the officers of the Government told you that you could go before the grand jury. Who was that?

A. Why, they didn't promise me that I could go before the grand jury, [2341—2011] but would try to arrange so I could. Mr. Watt.

Q. Weren't you summoned before the grand jury? Didn't you appear before the grand jury on a Government subpoena? A. I was.

Q. Something was said about Mr. Watt assisting me in the trial of these cases. You know that Mr.

(Testimony of C. W. Robnett.)

Watt is a special agent? A. Yes.

Q. Of the Department of Justice, and employed in assembling evidence in connection with cases?

A. Yes, sir; that is his duty.

Q. Had you been indicted when you first talked with Mr. Watt? A. No.

Q. About these land transactions?

A. Oh, yes, I had been, on the land transactions.

Q. No; you misunderstand me. You had been indicted on the land transactions before that, but had you been indicted on the bank cases before you first talked to Mr. Watt about that?

A. No, sir; just the charges.

Q. Do you remember testifying at Boise, on cross-examination by Mr. Tannahill, relative to the first conversation you had with Mr. Watt, and you made this statement, "I told him that there was some affair of that kind," and that he said, "are you still going to stand by those boys and try to protect them after their attempt to throw you down?" "And," I says, "I don't know as I am going to; if the matter of the timber transactions comes up and I am subpoenaed, I intend to tell all I know about the timber matters. In regards to the bank matter, I don't know as I want to make any statement at this time. I will see you when I return from Montana, I am going there to-morrow morning."

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Do you remember making that statement? [2342—2012]

(Testimony of C. W. Robnett.)

Mr. TANNAHILL.—The same objection.

A. Yes.

Q. Mr. Robnett, who was your attorney in the bank matters when Mr. Watt called upon you?

A. Mr. Tannahill.

Q. This same Mr. George W. Tannahill?

A. Yes, sir.

Q. And had the defense in the bank matters been outlined at that time?

A. Why, there was some talk of it.

Q. Was the defense outlined?

A. It was, yes; there was a certain amount of defense outlined.

Q. By whom was it outlined?

A. Mr. Tannahill.

Q. What was that defense to be?

A. Why, it was put up as a proposition of insanity plea.

Q. The expression has been used several times to the effect that you were seeking protection, in your conversation with the special agents. I will ask you what protection you were seeking?

A. Why, I was seeking no protection; the only statement in regards to that was relative to whether or not there would be any process that the Government would take in the prosecution, was the only question that was ever asked.

Q. Prosecution or grand jury proceedings?

A. Present the matter before the grand jury.

Q. What was told you in that?

(Testimony of C. W. Robnett.)

A. That there couldn't be any immunity promised and couldn't be any statements made in regards to that at all.

Q. I will ask you, Mr. Robnett, if you ever met me or ever spoke with me or I ever spoke with you before you appeared on the witness-stand before the grand jury? [2343—2013]

A. Nothing more than to perhaps just speak there in Moscow, I don't think I ever spoke to you until I met you in Moscow.

Q. In other words, whenever you were in the office and I came in I bowed to you? A. Yes.

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. I never had a word to say to you? A. No.

Q. What protection was it that you told Mr. Johnson that you wanted?

A. I don't know as I outlined any protection—just simply asked him what the Government men could do with me in regards to that, and he said they couldn't do anything.

Q. You were asked about the number of statements you had made to the Government officials and employees relative to these timber transactions. I will ask you if you didn't from time to time make statements of certain entries as they came up, came to your mind? A. Yes.

Q. You spoke of getting some money from a Mr. Arnold, I think it was, \$40.00 or \$50.00. What was that money for that you got from him?

(Testimony of C. W. Robnett.)

A. Money I had advanced him.

Q. Money you had loaned him and he paid you back? A. Yes.

Q. Now, there are a number of questions that were asked you when you had detailed certain parts of conversations that you hadn't given before, whether or not you had thought of those conversations since that time. I would like you to explain what you meant in your answers to those questions, whether you meant that at the time you were giving the conversations that you didn't remember them, and that you now remember them more distinctly than you did then? [2344—2014]

A. My recollection of the conversations at the present time is more distinct than it was at the former trials or former testimonies.

Q. You spoke of two conversations about contests; one of them was in 1900 or 1901, along in there somewhere, as I remember it, and I will ask you—Dwyer contests—who was that conversation between, if you remember it, the first one?

A. That conversation was between Mr. Kester and Mr. Kettenbach.

Q. And the other that you refered to, in 1904, relative to Mr. Dwyer's contents, who were the parties to that conversation?

A. One of them there was between Mr. Kester and Mr. Kettenbach and Mr. Dwyer.

Q. Now, the contest you referred to, in which one of the parties that you named said, "Why, Bill, you have filed a number of contests to-day," and some-

(Testimony of C. W. Robnett.)

body said there were fourteen or eighteen contests that had been filed that day, which one of the conversations was that in, relating to the contests of 1901 or 1902, or the one in 1904? A. 1904.

Q. You related two conversations relative to Mr. Goldsmith, and in the first conversation that you started to detail you said that Mr. Goldsmith and Mr. Kester and Mr. Kettenbach were in Mr. Kettenbach's private office, and that there was a discussion there between Mr. Kester and Mr. Kettenbach relative to having Mr. Dwyer employed by Mr. Goldsmith. Was Mr. Goldsmith there at that conversation, or didn't you switch the conversations that you were referring to?

A. The first conversation in regards to Mr. Dwyer, Mr. Goldsmith wasn't present.

Q. There were a great many conversations in the bank that you overheard, of these timber matters, and they were almost a continuous performance, were they not? A. Yes, sir. [2345—2015]

Mr. TANNAHILL.—We object to that as leading and suggestive and a conclusion.

Mr. GORDON.—Q. When you testified at Moscow at the trial of Kester, Kettenbach and Dwyer, from the record of which you have been questioned by counsel for the defense, you appeared as a witness on behalf of the defendants, did you not?

A. Yes, sir.

Mr. GORDON.—That is all, Mr. Robnett.

(Testimony of C. W. Robnett.)

Recross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Robnett, you stated that your defense in the bank matter was outlined by me while I was your attorney. I will ask you if your defense was not outlined after you had stated the facts to me in relation to the charges against you of misappropriating money and falsification of the records in the bank?

A. I decline to make any statement.

Q. How does it come, Mr. Robnett, that you are so willing to answer questions for the Government and willing to go into confidential relations between me and yourself, and then claim your privilege and refuse to answer them when I commence examining you about them?

A. The question may incriminate and I claim my constitutional privilege.

Q. Why didn't you claim your constitutional privilege when Mr. Gordon asked you about that same matter that I am cross-examining you about now?

A. I decline to make any statement.

Q. As a matter of fact, Mr. Robnett, didn't you tell me you was guilty of misappropriation and falsification of the records, and I told [2346—2016] you that anyone who would do what you did must have been crazy or a fool?

A. I decline to make any statement.

Q. Didn't you tell me you was guilty of the charges brought against you and give me a detailed statement of it? A. I decline to state what transpired.

Q. Didn't you mail to me a statement through the

(Testimony of C. W. Robnett.)

mail, Mr. Robnett, giving me a list of your speculations and how you would extract money from the bank, and how you did extract money from the bank, and this was given to me before there was any talk about your defense?

A. I decline to make any statement.

Q. Is it not a fact, Mr. Robnett, that at the time your defense was discussed and talked over, there was simply a discussion between you and myself in regard to what defense you might be able to make or what you would be able to make?

A. State the question again, please.

The last question was thereupon repeated by the stenographer.

A. It was discussed and the—

Q. Just answer the question yes or no, and then you can make any explanation you desire.

A. Yes.

Q. Now, if you have any explanation to make you can make it.

A. I don't care at the present time to make any explanation.

Q. Didn't you tell me when I talked with you about what probable defense you could make that they could pile up evidence until doomsday against you, and that you could make no defense against the evidence? A. I decline to make any statement.

Q. Didn't I also tell you, in the course of our conversation and discussion, when you was asking me what you could do, didn't I then state to you that the only defense you could possibly make would be the

(Testimony of C. W. Robnett.)

defense of insanity, because I thought a man who would do the things you [2347—2017] did must have been insane?

A. No, you did not make that statement, Mr. Tannahill, in that way.

Q. I told you that what you had done showed very clearly that you was insane or that there was something wrong with you, didn't I?

A. No; you stated that take the facts that they wanted to bring them out, and that might be a defense that might be carried out.

Q. Then there was no definite plan arrived at as to your defense while I was your attorney, was there?

A. There wasn't any particular absolutely outlined plan.

Q. There was just simply a discussion of it, and I expressed my opinion as we went along, according to the facts you gave me, is that not right?

A. You stated that that was your idea of how the case should be handled.

Q. And when you began negotiating with the Government officials I ceased to be your attorney at that time, didn't I?

A. You ceased to be my attorney when—yes, along when I stated that I perhaps would go over to the Government in the timber matters, of course, you said you couldn't act in that capacity.

Q. Didn't you also tell me you thought you would give testimony in the bank matters too at that time?

A. I don't recall just what took place between us,

(Testimony of C. W. Robnett.)

Mr. Tannahill, exactly.

Q. Didn't you also tell me that the Government officers had told you that they could arrange for you to get certain protection, but they didn't know just what it was at that time?

A. No, sir, I don't recall any such conversation as that.

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.) [2348—2018]

Q. Mr. Robnett, you were questioned yesterday concerning an irrigation scheme you had at Vale. Did you have an attorney in that case?

A. Yes, sir.

Q. Who was your attorney in that case?

A. Mr. Babb.

Q. The same gentleman who is representing some of the defendants here? A. Yes, sir.

Mr. GORDON.—That is all.

At this time an adjournment of the hearing was taken until Monday, September 19th, 1910, at Portland, Oregon, before Special Examiner A. M. Wing, in the grand jury-room of the Government building, at ten o'clock A. M. [2349—2019]

On September 19th, 1910, at 10 o'clock, A. M., the hearing was resumed, at Portland, Oregon, in Room 309, Postoffice Building before A. M. Wing, duly appointed as Special Examiner in said causes, and the following proceedings were had, to wit:

[Testimony of Claud Gatch, for Complainant.]

CLAUD GATCH, a witness called on behalf of the complainant being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Claud Gatch? A. Yes, sir.

Q. What is your vocation, Mr. Gatch?

A. I am National Bank Examiner.

Q. And you were such in August, 1909?

A. I was.

Q. Do you remember being in the directors' room of the Lewiston National Bank at Lewiston, Idaho, on August 18th, 1909? A. I do.

Q. Do you remember having a conversation with Mr. William Dwyer on that occasion, in the presence of Mr. O'Bleness and myself? A. Yes.

Q. I will ask you if at that time you made a memorandum of the conversation that you had with Mr. Dwyer? A. I did.

Q. I will ask you if you can tell what the conversation was (handing witness paper)?

A. Do you wish me to read it, Mr. Gordon?

Q. No, just tell it as best you can. You will refresh your [2350—2020] recollection from that paper.

Mr. TANNAHILL.—He can read it over if he wants to, and then testify.

A. Mr. Dwyer and Mr. Gordon were in conversation in reference to sundry matters, among others the circle K. checks. Mr. O'Bleness was there with

(Testimony of Claud Gatch.)

us, and Mr. Dwyer stated that he had drawn checks against the bank with a circle K. to the amount collectively of over a hundred thousand dollars, and that he had signed these checks, but it was understood that they were for the account of and that the checks so marked circle K. and signed by Mr. Dwyer were to be charged to the land account.

Q. Of whom?

A. Kester and Kettenbach's. That he had been buying timber and issuing said checks from about 1903.

Q. Till when?

A. That continued for five or six years.

Q. Do you remember anything further that was said at that conversation?

A. He spoke about his personal business, in which he said his wife signed the checks.

Q. Did he say his wife signed the checks or that he signed his name and it was charged to his wife's account?

A. I have written here, if I may quote that—

Q. Yes.

A. That for his personal business he signed his wife's checks, having no funds of his own in above account of Kester and Kettenbach land account. He signed his wife's checks; I recollect that.

Q. How did he sign his wife's checks?

A. I suppose he had authority to sign her name.

Q. I mean did he sign his name to his wife's checks? [2351—2021]

A. No; signed her name, if I recollect right.

(Testimony of Claud Gatch.)

Q. These circle K. checks, as you understood it, were what?

A. That was a circle drawn, and inside of that the letter K.

Q. That was on each one of these checks?

A. Yes.

Q. And the checks were signed William Dwyer?

A. Yes.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Gatch, did Mr. Dwyer not say at the same time that he frequently signed his own name to checks on his wife's account?

A. That is in this same conversation?

Q. Yes.

A. I don't recollect as to that specifically. He said that he signed his wife's checks.

Q. Do you remember of his telling you at any time that he signed his own name to checks for the account of his wife?

A. That had been charged to his wife's account?

Q. Yes.

A. He might have done so, but I have no specific remembrance of his saying so at that conversation.

Q. Now, didn't Mr. Dwyer also tell you that he was buying this timber for Kester and Kettenbach?

A. I don't remember.

Q. He might have told you that in that same conversation?

A. Yes. I asked—I wrote that out at my own suggestion to Mr. Gordon that I was in a good many

(Testimony of Claud Gatch.)

cases, and he asked me to be sure and remember what Mr. Kettenbach said.

Q. What Mr. Dwyer said, you mean? [2352—2022]

A. Yes. I said, "if that is the case, Gordon, let me write it right out when it is fresh in my memory," so I wrote it out.

Q. How long after the conversation was it?

A. Just as soon as Mr. Dwyer went out.

Q. You are testifying to-day from a written memorandum you have and not from a personal recollection of the occurrence of the conversation?

A. Well, from my recollection as it would be refreshed.

Q. Now, Mr. Gatch, you understood from Mr. Dwyer's conversation there that he did purchase timber for Kester and Kettenbach, did you not?

A. Do I say that in the statement?

Q. Well, I haven't read the statement over; I don't know.

A. I think I say so there. Let me see it. (Mr. Tannahill thereupon handed paper to witness.) Mr. Dwyer said he had drawn checks against the Lewiston National Bank with a circle K. thereon, to the amount of collectively over one hundred thousand dollars; that William Dwyer signed said checks, but they were for the account—

Q. You understood that he was buying the timber for Kester and Kettenbach?

A. I suppose that would infer so, yes, sir.

Q. Wasn't there something said in that same con-

(Testimony of Claud Gatch.)

versation regarding \$120,000.00 worth of timber that Kester and Kettenbach had purchased, or that Mr. Dwyer had purchased for them in the Clearwater country? A. \$125,000.00?

Q. No, \$120,000.00—about \$120,000.00.

A. That he had purchased?

Q. Yes, that he had purchased for Kester and Kettenbach?

A. I have no recollection of it. [2353—2023]

Q. Do you remember anything that was said regarding the purchase of timber in the Clearwater country? A. No, sir, I don't.

Q. How long was Mr. Dwyer and Mr. Gordon talking there in your presence? A. Oh, ten minutes.

Q. There was a great many things said there that you didn't take down, was there not?

A. It was a general conversation; yes.

Q. And there was a great many things said in regard to these circle K. checks and in regard to the purchase of timber in the Clearwater country that you didn't take down, wasn't there?

A. There might have been, but my recollection is as I wrote it down.

Q. This is the substance of what was said there?

A. Yes, as I recollect it.

Q. You don't mean to be understood as swearing that you took down everything that was said there?

A. No; certainly not.

Q. Mr. Gordon asked Mr. Dwyer questions, did he not? A. Yes.

Q. And Mr. Dwyer answered them freely?

(Testimony of Claud Gatch.)

A. Seemed to.

Q. And Mr. Dwyer talks quite fast in general conversation, does he not? A. Yes.

Q. And no doubt there was a great many things said there in that ten minutes?

A. Mr. Dwyer repeated himself several times.

Q. There was quite a little conversation, was there not, Mr. Gatch? [2354—2024]

A. Yes; it was a general conversation.

Q. There might have been a great many things said there concerning the circle K. checks and concerning the purchase of timber in the Clearwater country which you did not take down, and which you do not remember at this time?

A. Not likely, Mr. Tannahill.

Q. Do you wish to be understood as swearing positively to everything said in regard to the circle K. checks or the purchase of timber in the Clearwater country? A. I think I told you I didn't.

Q. Well, I didn't understand, Mr. Gatch. That is all.

Q. This conversation occurred at the time you sealed up Mr. Dwyer's box in the Lewiston National Bank, did it not? A. Afterwards, I think.

Q. It was after you sealed Mr. Dwyer's box?

A. After I sealed Mr. Dwyer's box, yes.

Q. Was it the day that you opened Mr. Dwyer's box?

A. I think it was the day I—wasn't it, Mr. Gordon, the day I opened Mr. Dwyer's box?

Mr. GORDON.—Yes.

(Testimony of Claud Gatch.)

A. Yes.

Mr. GORDON.—If you want to you can put it in the record that the box was sealed, and I met Mr. Dwyer on the street, and he said if we wanted to we could open his box, and we came right into the bank, and this conversation occurred at the time we were going through the box. [2355—2025]

[Testimony of James T. Jolly, for Complainant.]

JAMES T. JOLLY, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is James T. Jolly? A. Yes, sir.

Q. Where did you reside in April, 1906, Mr. Jolly?

A. Up near Fraser.

Q. In the State of Idaho? A. Yes, sir.

Q. What was your business at that time?

A. Teaming and farming.

Q. How many acres did you have under cultivation at that time, Mr. Jolly?

A. About twelve acres.

Q. That was regular farm land? A. Yes, sir.

Q. It wasn't a fruit farm? A. It was grain.

Q. Do you know Mr. Charles E. Loney?

A. Yes, sir.

Q. And Mrs. Mary A. Loney? A. Yes, sir.

Q. Are they relatives of yours? A. Yes, sir.

Q. In what way?

A. Mrs. Loney is a sister to my wife; Mr. Loney is a brother in law.

(Testimony of James T. Jolly.)

Q. Do you know Mr. Clinton E. Perkins? [2356—2026] A. Yes, sir.

Q. Are you in any way related to him?

A. Yes, sir, a brother in law to him.

Q. His wife was Mrs. Loney's sister?

A. His first wife was, yes, sir.

Q. Do you know Mr. Charles S. Myers?

A. Yes, sir.

Q. I will ask you whether or not you are in any way related to him? A. Yes, sir.

Q. In what way?

A. His wife is a sister to mine.

Q. Now, your wife also has another sister that married Mr. Gaffney? A. Yes, sir.

Q. What is his first name? A. John Gaffney.

Q. Then your wife has a sister who married one Walt Abrams? A. Yes, sir.

Q. And also a sister that married one Flemming Smith? A. Yes, sir.

Q. A long family of girls.

A. Yes, a Roosevelt family.

Q. Mr. Jolly, you know one Harvey J. Steffey, do you not? A. Yes, sir.

Q. And you knew him in April, 1906, did you?

A. Yes, sir.

Q. Did you ever have any talk with him about taking up a timber claim? [2357—2027]

Mr. TANNAHILL.—We object to the evidence of the witness in relation to taking up a timber claim, in so far as the same relates to bills No. 388 and 406,

(Testimony of James T. Jolly.)

upon the ground that the entry of the witness is not involved in either of these actions, and it is irrelevant and immaterial.

Mr. GORDON.—Read the question.

The last question was thereupon repeated by the stenographer.

Mr. GORDON.—Answer the question.

A. Yes, sir, I did.

Q. Now, state what was said. A. I asked—

Mr. TANNAHILL.—It is understood that we have the same objection to all the evidence of the witness, without repeating the objection before the answer to each question.

Mr. GORDON.—Yes.

A. I asked him if he could get me a timber claim, and, if so, I would like to take one.

Q. Now, had you talked to Mr. Charles Myers, your brother in law, prior to that conversation with Steffey, about timber claims?

A. I don't remember whether I did or not, but most likely I did.

Q. And you knew he had taken one up through Mr. Steffey, did you not? A. Yes, sir.

Q. Did you ever talk to him about the arrangements under which he had taken it up?

A. No, I don't think I did.

Q. Now, at the time that you took up a timber claim or when you first talked with Mr. Steffey, I will ask you whether or not you [2358—2028] had the money with which to purchase a timber claim? A. No, sir, I did not.

(Testimony of James T. Jolly.)

Q. And at the time that you talk with Mr. Steffey about taking up your claim did you also make arrangements with him or speak with him about getting a claim for your wife? A. Yes, sir.

Q. And she is Mrs. Effie A. Jolly, is she?

A. Yes, sir.

Q. I will ask you whether at that time you knew that Mr. Steffey was assembling timber claims by locating people on them?

Mr. TANNAHILL.—We object to that question on the ground that it is a double question and calls for a conclusion of the witness and not the statement of a fact, in that it refers to the question of assembling timber claims by locating people upon them.

Mr. GORDON.—Answer the question, Mr. Jolly.

WITNESS.—I don't know that I exactly understand the question

Q. What is there about it that you don't understand?

A. As to whether he was getting those claims, taking them off the hands of the people after they had proved up on them or not.

Q. You say what?

A. I say if I understand your question, it is that—it is, did we understand that he would take the claims off of our hands after he had located us on them.

Q. Yes, was that what your understanding was?

A. That is the way I understand the question.

Q. Yes.

A. No, there was no understanding to that effect.

(Testimony of James T. Jolly.)

Q. And now, as I understand, Mr. Steffey gave Mr. Loney \$5.00 with which to pay part of your expenses from Fraser to Lewiston when you filed your original papers, when you made your entry of the timber claim? A. Yes, sir. [2361—2031]

Q. I show you timber and stone land sworn statement, dated April 3, 1906, signed James T. Jolly, and ask you whether you signed that paper and filed it in the land office at Lewiston about the date it bears? (No answer.)

Q. You know whether that is your signature or not, don't you? A. Yes, sir.

Q. That is the first paper you filed in the land office? A. Yes, sir.

Q. I show you the nonmineral affidavit, bearing the same date, and ask you whether you signed that also? A. Yes, sir.

Q. I show you the testimony of James T. Jolly given at final proof, June 19, 1906, and ask you whether you signed that paper? A. Yes, sir.

Q. I show you the cross-examination of James T. Jolly taken at the land office June 19th, 1906, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. Now, when you and Mr. Loney reached Lewiston on the train on which you say Mr. Steffey also rode, on your way from Fraser to Lewiston, do you remember whether or not some one had those filing papers prepared for you?

A. Yes; we had to go before someone and have the application made out.

(Testimony of James T. Jolly.)

Q. Who went with you? Who secured that person to make them out for you? A. Mr. Steffey.

Q. He paid the fee for that, did he?

A. I forget whether he paid it or I paid it myself.

[2362—2032]

Q. You are not sure about that?

A. I am not positive.

Q. Then, you went to the land office and filed those papers you have identified? A. Yes, sir.

Q. Did Mr. Steffey go with you to the land office on that occasion? A. Yes, sir.

Q. Who paid the fee in the land office for the filing?

A. I paid that myself.

Q. With your own money, or did Mr. Steffey furnish that money?

A. Well, it was money gotten from him.

Q. But you got it from him for that purpose?

A. Yes, sir.

Q. You returned to your home after filing those first papers, and do you remember when you were notified of the time you should make your final proof?

A. Yes, sir.

Q. Who notified you of that?

A. Why, I got that with the advertising, in the paper.

Q. Did Mr. Steffey speak to you about it?

A. I believe not; I believe I had the paper with a copy of the advertisement sent to me.

Q. Do you remember coming from your home to Lewiston to make your final proof? A. Yes, sir.

Q. With whom did you come from Fraser to Lewis-

(Testimony of James T. Jolly.)

ton on that occasion?

A. Myself and Mr. Loney, I believe.

Q. Was Mr. Steffey along that time?

A. I disremember, but I don't think he was; no, I think I and Mr. Loney were alone. [2363—2033]

Q. Who paid your expenses down that time?

A. I paid my own expenses.

Q. Did Steffey give you the money for that purpose?

A. No, sir; he hadn't given us any prior to that.

Q. Did you meet him at Lewiston on your arrival?

A. Yes, sir.

Q. Was it then that he gave you the money that you had expended in coming to Lewiston?

A. Yes, sir; I got it from him then.

Q. How much more did you get from him on that occasion?

A. I got the amount that it took to make the final proof; I forget just what the amount was.

Q. That was in addition to the other amount?

A. Yes, sir.

Q. The amount for the final proof was just \$400.00? A. Yes, sir.

Q. And you got all of that from Mr. Steffey, did you not? A. Yes, sir.

Q. Was Mr. Loney with you when you received that? A. Yes, sir.

Q. Did you have an appointment with Mr. Steffey at Lewiston that day?

A. Yes, sir; he was to meet us there.

Q. Had you talked with him about meeting you

(Testimony of James T. Jolly.)

there to get the money for final proof between the time you talked to him first, before you made your entry, and the day you did meet him there?

A. Had I talked to him since I made the entry and meeting him at that time?

Q. Yes. [2364—2034] A. Yes, sir.

Q. When was that?

A. I don't remember the time, but I met him a number of different times.

Q. I mean had you made the appointment to meet him there? A. Yes, sir.

Q. When did you make that?

A. Well, I disremember just the day it was.

Q. I mean, how long before you made your proof?

A. It was just a few days before.

Q. Where did you meet him at Lewiston?

A. I met him on the street.

Q. Did he give you the \$400.00 on the street?

A. Yes, sir.

Q. And that was the \$400.00 that you paid in the land office when you made your proof, was it not?

A. Yes, sir.

Q. Now, was anything said when he gave you that money as to what you should say at the land office when the question was asked you as to where you got that money? A. That I borrowed it from him.

Q. He told you to say that?

A. That I got it from him, yes, sir.

Q. You didn't say that when you went to the land office though, did you?

A. I told them it was my own money.

(Testimony of James T. Jolly.)

Q. Do you remember when you were asked at the land office, on cross-examination, question 17: "Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession," you answered: "Earned by freighting and hard labor. Have [2365—2035] had part of it for some time and the remainder I got before I started down here." Do you remember making that answer?

A. Yes, sir; I believe I did.

Q. Sir? A. Yes, sir.

Q. And that wasn't altogether the truth, was it?

A. Not exactly.

Q. In other words, instead of getting it before you started down here you got it after you got here?

A. Yes, sir.

Q. And that very money you paid in the land office you hadn't actually earned in freighting and other hard labor, had you?

A. Well, not the exact money I paid in.

Q. Then, you returned to your home and some time after that you made a deed, did you not?

A. Yes, sir.

Q. You made your proof on June 19th, and on July 11th you made a deed, of the same year. Do you remember the occasion of making that deed?

A. Yes, sir.

Q. Where was it made?

A. It was made at Mr. Loney's house and signed at Mr. Loney's house before Mr. Todd, if I remember right.

(Testimony of James T. Jolly.)

Q. Who brought the deed there for you to sign?

(No answer.)

Q. Do you remember?

A. I believe Mr. Dwyer gave me the deed, I guess.

Q. Mr. William Dwyer, one of the defendants here? A. Yes, sir.

Q. Did Mr. Dwyer give you any money on that occasion? [2366—2036] A. No, sir.

Q. Was Mr. Steffey with him?

A. I believe not; I forget exactly whether Mr. Steffey was with him at the time or not. I don't think he was.

Q. Do you know how much you were given when you signed that deed?

A. I wasn't given anything right at that time.

Q. When were you given what you were to get? As near as you can remember?

A. I don't know; it was a few days afterwards. I disremember just when.

Q. Who gave you that? Who gave you the amount that you got? A. I believe Mr. Steffey did.

Q. How much was it? A. I disremember that.

Q. Wasn't it the balance of the \$200.00?

A. Yes, sir, the balance.

Q. He had been advancing you money all along, and this was enough that he gave you on this occasion to make up \$200.00, is that correct?

A. \$200 or \$250, I forget exactly which—yes, sir.

Q. I understand you made the arrangements for yourself and your wife the first talk you had with Mr. Steffey? A. Yes, sir.

(Testimony of James T. Jolly.)

Q. About taking up a claim for yourself and one for her? A. Yes, sir.

Q. You didn't have an agreement with Mr. Steffey that you were to convey the land to him, did you?

A. No, sir.

Q. But there was a general understanding that in view of the fact that he furnished this money you were to convey it to him after you made your final proof, is that correct? [2367—2037]

Mr. TANNAHILL.—We object to that question as leading and suggestive.

Mr. GORDON.—Q. That is your recollection, is it not, Mr. Jolly?

A. That was the impression, yes, sir.

Q. Did Mr. Steffey tell you that he couldn't make an agreement with you?

A. No, I don't believe he—

Q. Now, what did he say about it?

A. —said anything about it, but that—

Q. Did I understand you to say that there wasn't anything said about it?

A. No, there wasn't no agreement.

Q. Tell what the understanding was.

A. Well, I have told it just as near as I could.

Q. Tell it again, please.

A. It was the impression, of course, that they was to take it off of our hands.

Q. And that was the impression that you had the first time you talked with Mr. Steffey about it, wasn't it? A. Yes, sir.

Q. And it was really a silent understanding that

(Testimony of James T. Jolly.)

you people had, was it not?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Yes, sir.

Mr. GORDON.—And I will ask you whether or not, when you took it up you intended to convey it to Mr. Steffey?

A. Yes, sir, that was my intention.

Q. What did you understand you were to get for conveying it to Mr. Steffey?

A. \$250.00, I think, or \$300.00; I disremember exactly. [2368—2038]

Q. And you carried out your part of the understanding, did you not? A. Yes, sir.

Q. And did Mr. Steffey carry out his part of the understanding? A. Yes, sir.

Q. Do you remember how much you received from Mr. Steffey in all? A. No, I do not.

Q. Was it about \$200.00—between \$200.00 and \$250.00? A. Something upwards of \$200.00.

Q. You never gave a note to Mr. Steffey for any of the money he advanced you? A. No, sir.

Q. You never paid him any interest on it?

A. No, sir.

Q. And there never was anything said about when you were to return it, was there?

A. Yes, sir; I was to return it to him when I disposed of the land.

Q. Did you know Mr. William Dwyer at that time?

A. Yes, sir.

Q. Did you know of any relations that existed,

(Testimony of James T. Jolly.)

business relations that existed between him and Mr. Steffey?

A. Well, I knew they were locating land together, working together, that was their business.

Q. Now, did I understand you to say you signed a deed and delivered it to Mr. Dwyer?

A. No, sir.

Q. To whom did you deliver it?

A. After being signed?

Q. Yes.

A. You have got me pretty straight there; I disremember just exactly who it was. [2369—2039]

Q. Did you give it to whoever it was that presented it to you to sign? A. Yes, sir.

Q. Was Mr. Dwyer along at that time?

A. No, sir; he was not.

Q. Did Mr. Dwyer come to see you about the making of this deed? A. Yes, sir.

Q. What did he say to you?

A. He told me to sign it and forward it to Lewiston.

Q. To Lewiston? A. Yes, sir.

Q. To whom did he tell you to forward it?

A. Kettenbach and Kester.

Q. There wasn't anything said then about the price the land was being sold for, was there?

A. No, sir.

Q. Why did you sign the deed when Mr. Dwyer told you to? Because you knew he was connected with Steffey?

A. He was the one that was doing the purchasing,

(Testimony of James T. Jolly.)

buying the land; that is, he was the acting agent.

Q. For whom?

A. For Mr. Kettenbach and Kester.

Q. Well, but what was his connection with Mr. Steffey? A. I couldn't tell you.

Q. Now, you had never done any business with Mr. Dwyer relative to this claim before that time, had you? A. No, sir.

Q. And you say there wasn't anything said about money that you would receive from him, between you and Mr. Dwyer? A. No, sir. [2370—2040]

Q. When he told you to sign the deed though and send it to Kester and Kettenbach you did it?

A. Yes, sir.

Q. Was that because you knew of the relations that existed between him and Steffey?

A. Yes, sir.

Q. Was it your understanding that dealing with one was the same as dealing with the other? Is that correct? A. Yes, sir.

Q. Did I understand you to say that when Mr. Todd and Mr. Dwyer were up there that they brought along with them the deed that you signed?

A. I believe I said so. I might have said afterwards that Mr. Dwyer gave me the deed alone; he was alone when he gave me the deed. I believe that is the way I stated it.

Q. Then after the signing of the deed there was never anything said between you and Steffey about the money he had advanced to you, was there?

Mr. TANNAHILL.—We object to that as leading and suggestive.

(Testimony of James T. Jolly.)

A. No, sir.

Q. When you signed the deed you just understood that that was to clear off what you had gotten from Steffey and that there was something coming back to you, is that correct?

Mr. TANNAHILL.—The same objection.

A. It came out of the price of the land, yes, sir.

Q. Now, after that some time, did Mr. Dwyer bring you an affidavit for you to sign?

A. I forget who it was brought me the affidavit.

Q. Where did you sign the affidavit?

A. I believe I was at home. [2371—2041]

Q. What did he tell you about it, whoever it was that brought it to you?

A. Why, that was an affidavit showing that there was no previous agreement.

Q. Now, what did you mean by that?

A. No agreement before the entry or sale of the land.

Q. You meant by that that there was no written agreement, is that correct?

Mr. TANNAHILL.—We object to that as leading and suggestive. You have no right to lead the witness in that way.

Mr. GORDON.—Sir?

WITNESS.—There was not.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of James T. Jolly, dated April 3d, 1906, the nonmineral affidavit of James T. Jolly, of the same date, the notice for publication of James T. Jolly for the same date, the testi-

(Testimony of James T. Jolly.)

mony of James T. Jolly given at final proof June 19th, 1906, and the cross-examination of James T. Jolly taken at the same time, all of which papers have been identified by the witness; and the testimony of the witnesses, given at final proof, the cross-examination of them, the receiver's receipt and the register's certificate, dated June 19th, 1906, certified copy of patent, dated September 11, 1907, all of which papers relate to the entry of James T. Jolly to the south half of the northeast quarter, and the east half of the southeast quarter of section 4, township No. 36, north of range 5 east of Boise meridian. We also offer certified copy of a deed, dated July 11, 1906, made by James T. Jolly and wife, Effie A., to George H. Kester and William F. Kettenbach, conveying, in consideration of \$850.00, the south half of the northeast quarter and the east half of the southeast quarter of section 4, township 36 north of range 5 east of Boise meridian, said deed having been executed [2372—2042] and acknowledged before Fred H. Judd, Justice of the Peace, Nez Perce County, Idaho, July 11, 1906, and recorded in the office of the Recorder of Nez Perce County, at the request of the Lewiston National Bank July 27, 1906.

Said documents were thereupon marked by the Reporter as Exhibits 97, 97A, 97B, 97C, 97D, 97E, 97F, 97G, 97H, 97I, 97J, 97K, 97L, 97M, 97N, 97O, 97P.

Mr. TANNAHILL.—The defendants severally object to each and every paper offered in evidence, in so far as they relate or tend to support bills No. 388 and 406, upon the ground that the entry is not in-

(Testimony of James T. Jolly.)

volved in those two particular actions, and are irrelevant and immaterial. And the defendants severally object to the admission of any of the final proof papers in evidence in support of either of the bills or actions, upon the ground that they are matters occurring long after the filing of the sworn statement and relate strictly to the making of the final proof, and are irrelevant and immaterial.

At this time a recess was taken until 2 o'clock.
[2373—2043]

At two o'clock P. M. the hearing was resumed.

JAMES T. JOLLY, a witness heretofore called in behalf of the complainant, and duly sworn, being recalled for cross-examination, testified as follows, to wit:

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Jolly, I believe you said that you first asked Mr. Steffey if he could locate you on a timber claim? A. Yes, sir.

Q. And that was some time before he told you that he had a claim that he could locate you on?

A. Yes, sir.

Q. Do you remember how long it was before he told you he had such a claim? A. I do not.

Q. You simply asked him if he could locate you on a timber claim? A. Yes, sir.

Q. And he told you that he could later on, or something to that effect? A. I believe so, yes.

Q. He told you he could? A. Yes, sir.

Q. Now, then, did you speak to him again about

(Testimony of James T. Jolly.)

it later on, or did he speak to you about it and tell you that he had a claim that he could locate you on?

A. I believe he sent me word through some one.
[2374—2044]

Q. He sent you word through someone?

A. Yes.

Q. That he had a claim? A. Yes.

Q. Now, up to that time there had been no conversation as to any arrangements about locating you on a claim? A. Up to what time?

Q. Well, up to the time that he sent you word that he could locate you on a claim there had been no conversation between you further than you asked him if he could locate you on a claim—on a timber claim, and he said he thought he could?

A. No, sir, there had been no conversation about that.

Q. Now, do you remember who it was that he sent you word by that he could locate you on a timber claim? A. I do not.

Q. Then, where did you have your next conversation with him?

A. Well, it was on the way to the timber, when he went to show us the claim.

Q. And where did you meet him at that time? Where did you start from to the timber?

A. Well, I disremember where I met him; but I started, of course, from my home.

Q. From your home? A. Yes, sir.

Q. And you don't remember whether you met him at Pierce, or he met up with you some place on the

(Testimony of James T. Jolly.)

road? A. No, I don't.

Q. But you was going to look at the timber at that time? A. Yes, sir.

Q. Now, did you have a conversation—a further conversation with him about it before you arrived at the timber and looked over the timber?

A. No. Our conversation wasn't concerning the land; it was just [2375—2045] a general conversation.

Q. Yes—on general subjects? A. Yes, sir.

Q. Such as people would ordinarily talk about on a trip of that kind? A. Yes, sir.

Q. Now, after you arrived there and looked over the timber you was satisfied with the timber, was you? A. Yes, sir.

Q. And you was willing to take up the land—take up the timber? (No answer.)

Q. You was willing to take it up when you looked it over? A. Yes, sir.

Q. And you was satisfied from the looks of the timber that the value of the timber would enable you to sell it for more than what it would cost you to prove up on it? A. Yes, sir.

Q. Now, when was the next conversation you had with Mr. Steffey regarding locating you on a timber claim, in reference to the time that you looked over the timber—how long after you looked over the timber? A. How long after we had looked over it?

Q. Yes.

A. Well, I don't remember. We came right back and went on to Lewiston and filed on the land at the time.

(Testimony of James T. Jolly.)

Q. You filed on the land, and then did you have another conversation after you had filed on the land?

A. No, sir. That is, nothing further than a passing conversation.

Q. A passing conversation? A. Yes, sir.

Q. Now, where did you have your conversation where he told you that he was satisfied he could sell the land for you for enough so that it would clear you \$200.00 or \$250.00? Was that after you filed on the [2376—2046] land?

A. I disremember when that was, whether it was before or after the filing.

Q. I see. You don't remember just when that was? A. No.

Q. Well, now, your remembrance of that conversation was that he told you that he was satisfied he could sell the land for you for enough so that it would net you \$200.00 or \$250.00 over and above the costs of acquiring title or proving up? Is that your remembrance of the conversation?

A. Why, he never told me what he could get out of it.

Q. He never told you what he could get out of it?

A. No, sir.

Q. Then, there was no conversation between you as to what you could get out of it? A. Not any.

Q. I see. And you had no understanding regarding that? A. No, sir.

Q. And did you have any conversation with him regarding the fact that you didn't have the money to buy the land, and that he would loan you the money to make the proof and pay the expenses?

(Testimony of James T. Jolly.)

A. Yes, sir.

Q. Now, when did you have that conversation?

A. When we went to file on the land.

Q. When you went to file on the land?

A. Yes, sir.

Q. Now, was that conversation before or after you filed?

A. Well, I disremember the time, whether it was before or after.

Q. It was some time about the time you filed?

A. Yes, sir, along about that time.

Q. But there was no understanding that you was to sell it to him, or anything of that kind? [2377—2047]

A. No, sir.

Q. And I believe you said that he told you that you would have to pay him \$200.00 for location fee?

A. Yes, sir.

Q. When you sold the claim? A. Yes, sir.

Q. Then, you went and proved up on the land? Well, I will change that question. I believe you said in response to Mr. Gordon's question that you understood that you could get \$200.00 or \$250.00 out of the land over and above what the land would cost you. Now, that was simply your understanding about it from the fact that you had gone and looked over the timber, and your knowledge and opinion as to the value of the timber? A. Yes, sir.

Q. You didn't arrive at that understanding from anything particular that Mr. Steffey had told you he could sell it for? A. No, sir.

Q. I see. Then, it came time to prove up; and I

(Testimony of James T. Jolly.)

believe you said that no one told you about the time that you was to prove up, but you got the paper and seen that in the paper? A. Yes, sir.

Q. Seen your notice in the paper? A. Yes, sir.

Q. Then, you went down to Lewiston to make your final proof? A. Yes, sir.

Q. You remember that, do you? A. Yes, sir.

Q. And Mr. Steffey loaned you the money then to pay the purchase price of the land—\$400.00?

A. Yes, sir.

Q. And you had previously borrowed a little money from him to help you in paying your expenses? A. Yes, sir. [2378—2048]

Q. You didn't get enough money from him to pay all your expenses in connection with your purchase of the land, as I understand? A. No, sir.

Q. I see. Now, then, after you borrowed the money from Steffey, I believe you say that Mr. Steffey told you that you should say in the land office you borrowed the money from him; is that right?

A. Yes, he told me that.

Q. I will ask you if you don't remember that you and Mr. Perkins and someone else talked it over, and there was some suggestion between you that if you said you borrowed the money from him that possibly you would have trouble proving up, or something to that effect?

A. I don't remember any conversation of that kind.

Q. You don't remember that? A. No.

Q. Do you remember of Mr. Perkins and Mr. Bonney proving up before you did?

(Testimony of James T. Jolly.)

A. And Mr. Bonney?

Q. Yes.

A. No. Mr. Loney—or, Mr. Perkins proved up before I did.

Q. Mr. Perkins? Yes. I don't know just how this was, Mr. Jolly. I am just trying to find out for my own information. Mr. Perkins, then, proved up before you did? A. Yes, sir.

Q. Then do you remember Mr. Perkins using his own money to prove up, and not using the money that Mr. Steffey gave him to prove up with?

A. I don't know what Perkins did at all.

Q. You don't know? A. No, sir.

Q. And you don't know what Mr. Bonney did in regard to that, either, do you? A. No, sir.

Q. I see. Then you made your proof on the land, as I understand [2379—2049] it? A. Yes, sir.

Q. And after you had made your proof on the land some time—and by the way, on the 11th of July I believe is the date of the deed—yes, the 11th of July, 1906, you executed a deed to it?

A. Yes, sir.

Q. Just look at that deed and state whether or not that is the deed you executed at that time. (Exhibiting deed to witness, who examined the same.)

A. That is my signature.

Q. Now, do you know who witnessed that deed for you? A. Why, Mr. Judd did.

Q. Mr. Judd?

A. I was of the impression that I made it out before—signed it before Mr. Todd; but I find that I was

(Testimony of James T. Jolly.)

mistaken; I signed it before Mr. Judd.

Q. Mr. Judd? A. Yes, sir.

Q. And Mrs. Judd also witnessed it, did she not?

A. Yes, sir.

Q. Now, do you remember that it was at Mr. Judd's house that you made out the deed?

A. Yes, sir, it was in his office.

Q. Then, when you said that Mr. Dwyer handed you the deed to execute, you was mistaken, was you not? A. No, sir.

Q. Well, where did Mr. Dwyer give you the deed, do you remember?

A. He handed me the deed just a little piece from my house.

Q. A little piece from your house? A. Yes, sir.

Q. Now, are you sure that Mr. Dwyer handed you the deed, Mr. Jolly? A. Yes, sir. [2380—2050]

Q. Just think that over, Mr. Jolly.

A. I think Mr. Dwyer is the man that handed me the paper.

Q. Don't you remember that it was Mr. Steffey that handed you the paper? Just think that over carefully, Mr. Jolly? (No answer.)

Q. To refresh your memory, I will ask you, Mr. Jolly, if you don't remember that he told you that you would have to send the deeds down to Lewiston and put them in escrow until the abstracts were procured and the abstracts examined, and the title was shown to be all right, before you could get your money?

A.. Oh, yes, he told me that; but I am pretty posi-

(Testimony of James T. Jolly.)

tive that Mr. Dwyer gave me the money, although I may be mistaken. I find that I have been mistaken on several points.

Q. The reason I am particular about that is that Mr. Dwyer don't have any recollection of giving you any deed? A. Yes.

Q. It is really not any particularly material point, but I wanted you to get right on that, and refresh your memory on that and get right if you can.

A. Well, I remember by your pressing the matter so much just exactly where I received the paper, but as to which one really gave it into my hands I wouldn't be positive, but I think Mr. Dwyer was the one that gave that in my hands.

Q. Now, I don't remember Mr. Steffey's evidence clearly on that, but it is my recollection that Mr. Steffey testified that he gave you the papers. I am not sure about it, but that is my recollection.

A. Well, I wouldn't contradict him on it. I possibly may be mistaken in the one. But I remember distinctly where I received it.

Q. How is that?

A. I say I remember distinctly where I received it.

Q. Yes, and then, you went before Mr. Judd and executed the papers, did you? [2381—2051]

A. Yes, sir.

Q. Now, don't you remember that you left the deed there with Mr. Judd to send down to Lewiston to place in escrow there until the abstracts were brought up? A. Yes, sir, I did.

Q. And then after that you got your money?

(Testimony of James T. Jolly.)

A. Yes, sir, it was after that. I got my money for it.

Q. And do you remember that the price arrived at and agreed on was \$850.00, which included the money which Mr. Steffey had let you have and \$200.00 location fee, and \$200.00 that you was to receive over and—that you received over and above that?

A. Yes. I remember, since seeing the papers here this evening, that the amount that was specified in the deed, I wasn't positive until since they have presented the—

Q. The deed?

A. —the deeds here, and I have recalled it to memory so as to be positive.

Q. Then the definite amount agreed upon that you sold your place for, that was arrived at after you had made your final proof? A. Yes, sir.

Q. Then, you had no agreement for the sale of your land until after you had made your final proof?

A. None whatever.

Q. Then, Mr. Jolly, the affidavit you made at the time you filed your sworn statement, as follows: "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the

(Testimony of James T. Jolly.)

United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it? [2382—2052] A. Yes, sir.

Q. I now show you an affidavit introduced in evidence, marked Defendants' Exhibit "Z," and ask you to examine the affidavit, and state whether or not that is your signature attached to it.

A. Yes, sir, that is my signature.

Q. I will ask you, in order to refresh your memory, if you remember that Mr. Steffey handed you that affidavit to execute?

A. Well, I wouldn't be positive whether it was Mr. Steffey or Mr. Todd.

Q. The statements contained in that affidavit are true, are they, Mr. Jolly? A. Yes, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Jolly, when you signed that deed, I will ask you whether or not the question of the price you was selling at was discussed at all?

A. No, sir, not at that time.

Q. Well, was it ever discussed any other way or at any other time than to say that you would get \$250.00 or \$200.00 out of the claim?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—No, I don't think it was.

Mr. GORDON.—Q. Well, it is still your best recollection that Mr. Dwyer handed you the deed, is it?

A. Yes, sir.

Q. Now, your wife had taken up a timber claim,

(Testimony of James T. Jolly.)

and had arranged to get her money through Steffey about ten days or two weeks before you took your claim up, hadn't she? A. Yes, sir.

Q. And when you first talked with Steffey you knew that you could make the same arrangement, did you not? A. Yes, sir. [2383—2053]

Q. And you had no money either to take up a timber claim for yourself, of your own, did you?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—No, sir.

Mr. GORDON.—Q. And I will ask you if it had not been for the arrangement that you made with Steffey, and knew that you could get the money from him, you would not have taken up a timber claim at all, would you, at that time?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—Well, I probably would have taken up a timber claim.

Mr. GORDON.—Q. I say, at that time?

A. No, not at that time.

Q. And you would have waited until you had gotten the money of your own?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And you also knew that Mrs. Loney had taken up a claim under an arrangement with Mr. Steffey, did you not?

Mr. TANNAHILL.—Objected to as leading and suggestive.

(Testimony of James T. Jolly.)

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And that she had gotten the money from Steffey?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And I will ask you whether or not you also knew that Mr. and Mrs. Myers had taken up a claim under an arrangement with Mr. Steffey to get the money—at that time?

A. Yes, sir. [2384—2054]

Q. And the whole matter was talked of among you as to the arrangement that was made with Steffey, was it not?

Mr. TANNAHILL.—Objected to as leading and suggestive.

WITNESS.—Yes, sir, we talked about it.

Mr. GORDON.—Q. Now, didn't Mr. Steffey at that time live at the house of one of the sisters of your wife?

A. He was staying at the hotel at Mr. Gaffney's, yes.

Q. You in your sworn statement swore that you had no agreement with Mr. Steffey, and also in the affidavit that has been presented here by counsel you swore that you didn't have an agreement with anyone to sell this land? A. Yes, sir.

Q. And that you were taking it up for your own use and benefit? A. Yes, sir.

Q. But what was the understanding you had—what was the understanding between you and Steffey and the rest of these people?

(Testimony of James T. Jolly.)

Mr. TANNAHILL.—We object to that as a repetition, and on the further ground that the witness is not supposed to know what the understanding was between Steffey and other people. He can only know what transpired concerning his own claim.

Mr. GORDON.—Answer the question, Mr. Jolly.

A. There was no direct understanding.

Q. Well, what was the indirect understanding?

Mr. TANNAHILL.—The same objection.

WITNESS.—Just with the understanding that he was to take the land if we wished to let him have, that's all. There was no agreement whatever.

Mr. GORDON.—Q. Was that the understanding you had when you first spoke to him about the timber claim? A. Yes, sir, that was the impression.

[2385—2055]

Q. Sir?

A. That was the impression or the understanding.

Q. How is that?

A. Yes, sir; I say that is the impression.

Q. When you first talked with him about it?

A. Yes, sir.

Q. Before you had ever seen the land?

A. Yes, sir.

Mr. GORDON.—That's all.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Now, you had gone to see the land, and had arranged to take up the claim, before you ever found out you could get the money from Steffey, had you not, Mr. Jolly? A. Yes, sir.

(Testimony of James T. Jolly.)

Q. Then, if you had been unable to get the money from Steffey, you would no doubt have tried to get the money from someone else to make your proof with, would you not? A. I surely would.

Q. Then, the question of your taking up the land didn't altogether depend on whether or not Mr. Steffey would loan you the money, did it?

(No answer.)

Q. That is, the question of whether or not you would have taken up the land did not altogether depend on whether or not you could get the money from Steffey? A. It would at that time.

Q. That is, you might have—

Mr. GORDON.—Well, let him answer the question.

Mr. TANNAHILL.—You might have borrowed it—

Mr. GORDON.—What was that you said, Mr. Jolly?

WITNESS.—I said it would have depended on it at that time. [2386—2056]

Mr. TANNAHILL.—Q. Then, if you had failed to get the money from Steffey, you would have tried to get the money from someone else, is that right?

A. Yes, sir, I probably would.

Q. And if you had had an opportunity to sell the land for \$1,000.00 more than the expenses cost you, why you would have been likely to have sold it, and paid Mr. Steffey the money back you borrowed from him, and paid him his location fee, would you not?

A. I certainly would have done so.

(Testimony of James T. Jolly.)

Q. You was under no particular obligations to sell to Mr. Steffey unless he wanted to buy it?

A. Not any—I was at perfect liberty.

Q. At liberty to sell to anyone else?

A. Yes, sir.

Q. The only question that there was with you was a matter of whether or not you could sell it and get your money out of it? A. Readily—yes.

Q. Readily? A. Yes—at once.

Mr. GORDON.—Q. But didn't you know, Mr. Jolly, that Mr. Steffey wanted that particular claim?

A. No, sir, I didn't.

Q. And didn't you feel under obligations to let Mr. Steffey have that claim when he wanted it?

A. No, sir.

Q. None whatever? A. No, sir.

Q. Did you ever try to sell it to anyone else?

A. No, sir, I didn't.

Mr. GORDON.—That's all.

Mr. TANNAHILL.—That's all. [2387—2057]

[**Testimony of Mrs. Effie A. Jolly, for Complainant.**]

Mrs. EFFIE A. JOLLY, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Mrs. Effie A. Jolly?

A. Yes, sir.

Q. And you are the wife of Mr. James T. Jolly?

A. Yes, sir.

Q. And you lived in Fraser, Idaho, in March,

(Testimony of Mrs. Effie A. Jolly.)

1906, did you not? A. Yes, sir.

Q. Are you the sister of Mrs. Jannie Myers?

A. I am.

Q. And did one of your sisters marry Mr. Clinton E. Perkins? A. Yes, sir.

Q. And did another one of your sisters marry Mr. Charles E. Loney? A. Yes, sir.

Q. That is Mrs. Mary A. Loney, is it not?

A. Yes, sir—Mrs. Mary A. Loney.

Q. Have you a sister married to a Mr. Gaffney?

A. Yes, sir.

Q. And what is her name? A. Dora.

Q. And what is Mr. Gaffney's name?

A. John.

Q. And where do they reside? A. Pierce City.

Q. How far is that from where your home was?

A. About 25 miles.

Q. Did you know Mr. Harvey J. Steffey prior to the time you took up a timber claim?

A. Yes, sir; I had known him for a short time, I don't know just how long. [2388—2058]

Q. And where did you meet him?

A. I am sure I can't tell just now where it was, but I think it was at Mr. Myer's house. I am not sure, but I think it was.

Q. Mr. Charles Myers? A. Yes, sir.

Q. Your brother-in-law's?

A. Yes, I think so; either there or at Pierce City, I wouldn't be sure which.

Q. And did you learn at the time you met him that he had located Mr. Myers on a timber claim?

(Testimony of Mrs. Effie A. Jolly.)

A. No, sir, I didn't at that time when I first met him.

Q. Well, how long after you met him did you learn that?

A. Well, I'm sure I can't tell you, it has been so long ago.

Q. Well was it before you located?

A. Oh, yes. Yes, it was before we located.

Q. And did you know that Mr. Steffey had located Mr. Myers and had advanced him the money to take up a timber claim?

Mr. TANNAHILL.—We object to any evidence of the witness relative to acquiring a timber claim, in so far as the same relates to bills No. 388 and 406, upon the ground that the entry of the witness is not involved in these two particular actions, and it is irrelevant and immaterial.

Mr. GORDON.—Answer the question, please.

A. Well, I knew that Mr. Myers had taken a claim, but I didn't know where he was getting his money. I didn't ask him anything about that. There was nothing said about it.

Q. Now, I will ask you whether or not when you and your husband took up a timber claim, whether or not you had the money with which to purchase a timber claim?

A. No, sir; I didn't have the money, and he didn't, either.

Q. Now, did you convey that intelligence to Mr. Steffey when you first talked with him about taking up a claim?

(Testimony of Mrs. Effie A. Jolly.)

A. No, sir; but he knew our circumstances about as well as we did [2389—2059] ourselves.

Q. And when did you learn that you could get the money from Mr. Steffey to take up a claim?

A. Well, there was nothing said about the money, I guess, any more than I wanted him to get me a claim, and that is all there was to it.

Q. And who did you send him word by?

A. I think it was through Mr. Myers. I am not right sure, but I think it was.

Q. And how long after that was it that you saw him when he took you to the claim?

A. I don't think it was over two or three weeks, something like that. I am not quite sure of the dates.

Q. And did you pay Mr. Steffey a fee for locating you on that timber?

A. No, sir, only just—well, yes, we paid him a fee, of course.

Q. How is that?

A. He was to pay all expenses himself.

Q. He was to pay all expenses himself?

A. Yes, sir. He paid all the expenses himself.

Q. You came down to Lewiston with him when you filed, didn't you? A. Yes, sir.

Q. And who else came along with you?

A. Mrs. Loney.

Q. And who paid the expenses of that journey?

A. Well, Mr. Steffey paid part of it, and I paid part.

Q. And did he give you the money before?

(Testimony of Mrs. Effie A. Jolly.)

A. He gave the money to Mrs. Loney, and she handed me the money.

Q. He gave her the money? A. For her part.

Q. And money for your part, too?

A. Yes, sir, and she gave it to me.

Q. Now, before you went to look at this land, did you have an understanding [2390—2060] of any kind with Mr. Steffey?

A. No, sir, we didn't have any particular understanding.

Q. Well, now, what was this understanding which you had that was not particular?

A. Well, we just sent him word that we wanted him to get us a claim; and the first thing we knew he sent word that he had a claim, and we went and got it.

Q. And what were you to do with your claim?

A. Well, there was nothing said what we was to do with it. Of course, we had in our own minds what we would do with it.

Q. Well, what did you have in your own mind that you would do with it?

A. Well, I supposed he would probably get the claim when he was ready.

Q. And I will ask you whether or not you knew that you could get the money from Mr. Steffey before you filed on the claim?

A. Well, no, I didn't know for sure that we could; I supposed probably we would have to give him a note or something to get this money. But then he never asked for any. That was my intentions.

(Testimony of Mrs. Effie A. Jolly.)

Q. It was your intention before you went there to give him a note for it?

A. Yes, sir, if he asked it, but he never even asked it, and so of course there wasn't any note given.

Q. Do you know whether or not he was trying to get together a body of timber claims?

A. No, sir, I didn't.

Q. And did you know that he was dealing in timber claims?

A. Yes, sir, I knew he was dealing in timber claims.

Q. I will ask you whether or not when you first talked with Mr. Steffey if he said anything about not being able to make an agreement with you relative to purchasing your claim?

A. No, I don't remember whether he did or not, but I don't think [2391—2061] he did. I am not sure of that.

Q. Was there anything said about the law relative to whether or not you could make an agreement with him?

A. No, sir, I don't think so; not that I remember of now.

Q. How is that? A. No, sir, I don't think so.

Q. Did Mr. Myers tell you the arrangement that he had with Mr. Steffey? A. No, sir, he didn't.

Q. Did Mrs. Myers tell you her arrangement?

A. No, sir, I don't think she did.

Q. Now, you say that you expected sooner or later that Mr. Steffey would get your claim?

A. Yes, sir.

(Testimony of Mrs. Effie A. Jolly.)

Q. And I will ask you whether or not that was one of the reasons that you took up a timber claim?

A. Yes, of course, it was one of the reasons. There was several around taking them up, and I didn't really suppose I was doing anything more wrong than the rest of them. I supposed it was all right. I didn't think that anything like this would ever come up, of course.

Q. I show you, Mrs. Jolly, timber and stone lands sworn statement signed Effie A. Jolly, dated March 23d, 1906, and ask you if that is your signature to that paper, and whether or not you filed it in the land office at Lewiston, Idaho, about the date it bears? A. Yes, sir, that is my signature.

Q. I show you the nonmineral affidavit of Effie A. Jolly, of the same date, and ask you if you signed that paper and filed it? A. Yes, sir, I did.

Q. I show you the testimony of Effie A. Jolly, given at the final proof, July 12th, 1906, and ask you if you signed that paper? A. Yes, sir.

Q. I show you the cross-examination of Effie A. Jolly, bearing the same date. [2392—2062]

A. Yes, sir.

Q. And ask you if you signed that paper?

A. Yes, sir.

Q. I understood that Mr. Steffey came from your home to Lewiston with you when you filed—on the trip you came to make your original filing, did he not? A. When we went down to file?

Q. Yes.

A. Yes, sir; he was on the same train. Of course,

(Testimony of Mrs. Effie A. Jolly.)

he wasn't along with us, but he went on the same train we did.

Q. And did you have an agreement with him that you would meet him on the train if he would go down with you?

A. No, we didn't have any agreement. He had located us the same day, and he went on down to Greer, and we came on down that evening.

Q. Well, I mean did he tell you he would meet you on the train?

A. Yes, sir; he said he would be down.

Q. Now, do you know who prepared those filing papers that you have identified?

A. No, sir, I don't—now.

Q. Well, do you know who went with you to have them prepared? A. As a witness, do you mean?

Q. No. I mean who went with you? You had to have them prepared somewhere, and somebody had to write them out for you. Now, who attended to that for you? A. Let's see: I don't—

Q. Did Mr. Steffey go along and have them prepared for you?

A. I think so. I am not sure; I am not right sure whether he did or not; I wouldn't say positive.

Q. Well, did you have to pay any fee for having those papers drawn up?

A. As to that I can't say, but I think we did. I am not sure whether we did or not. It has been so long ago that I don't remember. [2393—2063]

Q. If you did, do you know whether that was out of the money that Mr. Steffey gave you?

(Testimony of Mrs. Effie A. Jolly.)

A. No, sir, I don't.

Q. You don't remember anything about it?

A. No, I don't.

Q. Well, did Mr. Steffey go with you to the land office when you filed those papers? A. Yes, sir.

Q. And do you know who paid the fee at the land office?

A. I think we paid it ourselves, but I think he gave us the money or a part of the money for expenses, but I am not sure.

Q. Well, before you filed was it the understanding that Mr. Steffey was to furnish the money?

A. Well, there was nothing said to that before we filed.

Q. Now, how did he come to give you the money to pay your expenses—your expenses and Mrs. Loney's?

A. Well, we had part of the money ourselves, but I am not sure whether he asked us if we had money enough to bear our expenses or not, but I think he did, but I am not sure—

Q. And that was before you left home?

A. Yes, sir.

Mr. TANNAHILL.—Just let her finish the answer, Mr. Gordon.

WITNESS.—I am not sure whether he did or not, but I think he did, and I think we told him we had partly enough, and I think he gave us \$5.00 apiece, but I wouldn't be positive.

Mr. GORDON.—Q. Now, was anything said before you entered as to how much you were to get out

(Testimony of Mrs. Effie A. Jolly.)

of this claim?

A. Well, yes, there were. He said we would get close to about \$200.00.

Q. Was that before you went up to look at the claim?

A. No; I think it was after we came back, or something like that. [2394—2064]

Q. As you were coming back from the claim?

A. It seems to me like, yes.

Q. And it was before you met him at Greer and came down to file the papers?

A. Yes, we met him at Greer—we was to meet him there.

Q. Yes, but I say, that is the time he told you you would get about \$200.00?

A. No. We came on down, after he had located us on the claims, and as we went to Greer I think that is when it was, I am not sure.

Q. And when was it he told you that you would get somewhere near \$200.00 for your claim?

A. I think it was as we came home from locating, I am not sure.

Q. Now, what do you call locating?

A. Well, he took us up and showed us the claims and the numbers of the land.

Q. And you came back to your home then?

A. Yes. We had to pass right by our home going to Greer, and we got a ride and went on to Greer that same evening. The claim wasn't very far from there.

Q. Now, was it on the trip to Greer he told you that?

(Testimony of Mrs. Effie A. Jolly.)

A. I think so, but I wouldn't be positive.

Q. And was that agreeable to you?

A. Yes, sir.

Q. Then, after you filed this sworn statement and this Nonmineral Affidavit that I have shown you, you returned to your home, and Mrs. Loney did?

A. Yes, sir.

Q. And do you remember the occasion of coming down to Lewiston to make your final proof?

A. Yes, sir.

Q. Well, do you know who told you to come down?

A. Well, they told us there when we filed what date to come on. [2395—2065]

Q. And did you keep that in mind?

A. Yes, sir, we did.

Q. Or were you notified some other time?

A. No, we were not notified some other time.

Q. And who came with you when you came to make your final proof?

A. Mrs. Loney and John Gaffney.

Q. And did you see Mr. Steffey on that occasion?

A. I don't think we saw him until in Lewiston. I am not sure whether we did until we got to Lewiston.

Q. And did you make that appointment then?

A. No, sir.

Q. You didn't have the money to make the final proof?

A. No, but he was in Lewiston, I think, at that time; I am not sure.

Q. And did you go to see him about getting the money?

(Testimony of Mrs. Effie A. Jolly.)

A. I think he was there at the land office?

Q. And you went there to meet him, did you not?

A. Well, we went there to prove up, but we met him when we got to Lewiston.

Q. Well, I say, where did you meet him—at the land office?

A. No, sir; I think it was some hotel, but I couldn't say what hotel it was; that is where he gave us the money.

Q. It was there that he gave you the money?

A. Yes, sir.

Q. And how much did he give you?

A. \$400.00, I think.

Q. And was that the money with which you made your proof?

A. Yes, sir—\$412.00, I think, or something like that. It was enough to prove up, anyhow. I wouldn't state positive. It was just the amount.

Q. And did you give him a note as evidence of that indebtedness?

A. No, sir; he never asked for any. [2396—2066]

Q. And did you pay him any interest at all on that money? A. No, sir.

Q. And was anything said about when that money was to be repaid? A. No, sir, there was not.

Q. Now, you sold and conveyed this property to somebody, did you not? A. Yes, sir.

Q. Now, to whom did you convey it?

A. Kettenbach and Kester.

Q. Who brought the deed for you to sign?

A. Well, now that I think, I am a little bit mixed

(Testimony of Mrs. Effie A. Jolly.)

up on—there was an affidavit signed, and there was a deed signed. I thought the deed was signed at Mr. Loney's, but since I have been studying over it I think it was signed at Mr. Judd's, but I am not sure. It was either the affidavit or the deed.

Q. And who talked to you about signing the deed?

A. Well, there wasn't anyone really talked to me about signing it. I think it was either sent or brought to us.

Q. Now, the price was not discussed at that time, was it? A. No, sir.

Q. And nothing was said about what the price would be between the time that you first talked with Mr. Steffey there at Greer, before you filed, and the day you made the deed, was there?

A. No, sir, I don't think so.

Q. And were you given any money that day?

A. No, sir.

Q. And who notified you that the deed was down there to be signed?

A. Well, I ain't sure whether Mr. Steffey brought the deed, or whether it was Mr. Todd.

Q. Did you ever meet Mr. Dwyer in this transaction?

A. Yes, sir, I met him, but when it was I can't say.

Q. What is your best recollection as to when you first met him in [2397—2067] this transaction?

A. Well, I declare I can't tell you when it was or what it was now. It has been so long ago now that I haven't tried to keep it in mind.

Q. Now, do you remember whether or not you went

(Testimony of Mrs. Effie A. Jolly.)

down to Mrs. Loney's house to sign that deed?

A. We went to Mrs. Loney's house to sign some papers, but I declare I can't tell now whether it was the deed or the affidavit.

Q. What is your best recollection?

A. Well, I thought all the time it was the deed until I got to thinking it over awhile ago.

Q. Now, what was it that caused you to think it over? Did you talk it over with your husband?

A. Well, he said, "That wasn't the deed, was it, we signed at Loney's?" and I said, "I think it was,"—and it will have to be proved to me—I think yet it was—and he said "No, it was at Mr. Judd's; we went out to Mr. Judd's, and signed it at Mr. Judd's."

Q. Well, couldn't you have signed the deed at Mrs. Loney's and taken it to Mr. Judd's and sworn to it and left it? A. Yes, I think it could be.

Q. You know Mr. Dwyer, one of the defendants here, when you see him? A. Yes, sir; I know him.

Q. Now, do you remember of signing an affidavit later? A. Later?

Q. Later—after you signed the deed?

A. Yes; I remember signing two papers, but—

Q. Now, do you know who you got the affidavit from? A. Mr. Todd, I believe, but I am not sure.

Q. Well, what is your best recollection as to whether or not you got the affidavit from Mr. Dwyer?

A. Well, it was Mr. Todd, I believe, brought the affidavits, and it was signed there at Mrs. Loney's, I think, instead of the deed, but I [2398—2068] am not sure.

(Testimony of Mrs. Effie A. Jolly.)

Q. Well, is your recollection to the affect as to whether or not Mr. Dwyer had anything to do with the affidavit?

A. No, sir; I don't remember whether he had anything to do with it or not.

Q. Then, your best recollection is that the only time you had anything to do with Mr. Dwyer in this transaction is when the deed was presented?

A. Yes, sir; I think that was it, but I am not sure whether it was or not.

Q. That is all we want, Mrs. Jolly. We are not trying to catch you up on it; we are just trying to get your best recollection, that's all.

A. Well, I am trying to give you the best I can recall it. It has been so long ago that it is quite hard for me to remember.

Q. You met Mr. Dwyer somewhere in this transaction, though?

A. Yes, I did, but I declare I can't remember where it was at now.

Q. Now, I will ask you whether Mr. Steffey had told you to make the deed to anybody?

A. No, sir; I don't think he did.

Q. And do you remember whether or not it was discussed between you and Mr. Loney and the rest of your family as to the propriety of going down there and signing a deed without getting any money out of it?

A. No, sir; I don't. Of course, it was talked there, living right close to one another, about going, and such as that; but we really understood, I suppose, or

(Testimony of Mrs. Effie A. Jolly.)

she did for herself, the same as the rest of us.

Q. You mean Mrs. Loney? A. Yes, sir.

Q. And did you know whether or not Mr. Dwyer was associated in business with Mr. Steffey?

A. I understood he was; yes, sir.

Q. Where did you get that understanding? [2399—2069]

A. Well, I don't know, but I know he and Mr. Steffey were locating people at the same time. I don't know, unless they were interested with one another that way. I know they was locating.

Q. Now, when did you get your money out of this property?

A. Well, I got it at different times; I got the last of it when the deed, or just after the deed was made out, after Mr. Steffey went to Lewiston and sent me the check for the rest of it.

Q. How much was that—\$50.00?

A. I think so. I think \$50.00 was the last payment.

Q. I show you two checks, marked Plaintiff's Exhibits 59 and 60, one drawn to the order of E. A. Jolly in the sum of \$50.00, and dated December 4th, 1906, and another one dated February 28th, 1907, to E. A. Jolly, signed H. J. Steffey. Were those checks given to you or sent to you by Mr. Steffey?

A. Yes, sir; they were given or sent, I don't remember which. I know he gave me one.

Q. And that is your signature on the back of them?

A. Yes, sir.

Q. Mrs. Jolly, your claim was held up for some-

(Testimony of Mrs. Effie A. Jolly.)

thing, wasn't it? A. Yes, sir.

Q. And do you know what was the matter with it?

A. No, sir; I don't.

Q. And did you employ an attorney?

A. No, sir.

Q. To take care of it for you? A. I did not.

Q. Did you know that a Mr. Mullen and Kasberg represented your claim at the hearing?

A. No, sir; I don't know who it was.

Q. How is that? A. I don't know who it was.

Q. You didn't employ anybody, did you? [2400—
2070] A. No, sir.

Q. You never paid anybody any fee for that service? A. No, sir; I didn't.

Q. And when you received the last \$50.00 that you received from Mr. Steffey, was anything said about that being all that was coming to you?

A. No, sir. I think he sent that up—I think he just sent it in a check through the mail.

Q. And you understood at that time—

A. Yes, sir.

Q. —that you had concluded your part of the arrangement, and he had concluded his?

A. Yes, sir.

Q. I will ask you whether or not the whole matter turned out just as you understood it would at the time you went up to view the land?

A. Yes, sir; I think it did.

Q. When you made the affidavit that you made some time after you made the deed, Mrs. Jolly, was anything said at that time as to the purpose of that affidavit?

(Testimony of Mrs. Effie A. Jolly.)

A. Well, yes, there was, but I can't just call to mind what the words were, or just what it was.

Q. Now, do you know whether or not at that time they were investigating these timber and stone claims?

A. No, sir; I don't know whether they was or not at that time.

Q. Did you know that there was an investigation being made of them?

A. No, I don't hardly think there was at that time—not very long afterwards, though; but I ain't sure whether there was right at that time or not. I am not sure whether there was or not.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Effie A. Jolly, dated March 23d, 1906, the notice for publication, the nonmineral affidavit, the testimony of Effie A. Jolly given at the final proof, and the cross-examination taken at the same time, all [2401—2071] of which papers have been identified by the witness, the testimony of the witnesses at final proof, the cross-examination of them, the receiver's receipt and the register's certificate, dated December 5th, 1906, a certified copy of the patent issued to Effie A. Jolly, and dated June 3d, 1909, all relating to the entry of the east half of the northwest quarter and the north half of the northeast quarter of section 17, in township 36 north, of range 5 east, of Boise meridian, together with a certified copy of the deed made and executed by Effie A. Jolly and James T. Jolly, conveying to George H. Kester and William F. Ketten-

(Testimony of Mrs. Effie A. Jolly.)

bach, in consideration of \$900.00, the east half of the northwest quarter and the north half of the northeast quarter of section 17, in township 36 north, of range 5 east, of Boise meridian, acknowledged on the 28th of February, 1907, before William J. Todd, a notary public for Nez Perce County, Idaho, dated February 28th, 1907, and recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of C. W. Robnett, March 4th, 1907.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but severally object to the admission of either thereof in evidence in support of bills No. 388 and 406, on the ground that the entry of the witness is not involved in those two particular actions, and they are irrelevant and immaterial. The defendants also severally object to the admission of any of the final proof papers in evidence in support of either of the actions, upon the ground that they are matters occurring long after the filing of the sworn statement, relate to the final proof only, and they are irrelevant and immaterial.

Said documents were thereupon marked by the reporter as Exhibits 98, 98A, 98B, 98C, 98D, 98E, 98F, 98G, 98H, 98I, 98J, 98K, 98L, 98M, 98N, 98O, 99P, and 99Q.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Jolly, I believe you said that Mr. Steffey asked you when you went down to file if you had money enough to pay your expenses, and you told

(Testimony of Mrs. Effie A. Jolly.)

him that you had part of it. That is your recollection about it, [2402—2072] is it?

A. Yes, sir, I think so.

Q. Then, there was something said afterwards about you not having money to make your final proof, was there? A. Well,—

Q. Or did this conversation relate to whether or not you had money enough to pay the expenses of your filing, or did it relate to paying your expenses and filing and your final proof?

A. Well, of course, he knew the we didn't have enough to prove up on, and at the time why we had partly money enough to file, part of our own money and part of it he gave to my sister, and she gave it to me, which, of course, was the same thing.

Q. Then, you understood that you was borrowing the money from him to finish out the amount necessary for your filing fees?

A. That is the way I understood it, but he didn't say that.

Q. Well, I just wanted to get your understanding of it. A. Yes, sir; that was my understanding.

Q. And also that you were borrowing the money with which to pay for the final proof? A. Yes, sir.

Q. And it was your understanding that you would sell it to him after you made your final proof if he wanted to buy it?

A. If he wanted to buy it. There was nothing said whether we was to sell it or anything of the kind, or who we was to sell it to.

Q. And you really had no agreement or under-

(Testimony of Mrs. Effie A. Jolly.)

standing with him that he was to buy the claim, before you made final proof? A. No, sir, we didn't.

Q. Now, you say when you was coming back from looking at the claim that he told you that he thought you could get about \$200.00?

A. Close to \$200.00, I believe, yes, sir.

Q. Now, how did that come up? Did you ask him what the claim was worth, and what you could get for it? [2403—2073]

A. Well, I'm sure I couldn't tell you now how it did come up.

Q. But your recollection is that the statement was made there that you ought to be able to get about \$200.00. A. Yes, sir.

Q. For the claim, over and above what it would cost you? A. Over all expenses.

Q. Then, after you made your final proof there was some kind of a contest on the claim, was there not?

A. There must have been something or other. Our papers were held up for some cause, and I never did know what it was about.

Q. You understood that Mr. Steffey was to get a location fee of \$200.00, didn't you? A. Yes, sir.

Q. And in order for Mr. Steffey to get that location fee, he had to acquire that title, didn't he?

A. I suppose he did—he certainly did.

Q. And you had no agreement with him whereby you was to pay for acquiring the title, did you?

A. No, sir, we didn't.

Q. And then, you made your final proof, and the proceeding—the claim was held up for several

(Testimony of Mrs. Effie A. Jolly.)

months, was it not?

A. Yes, sir, I think about six months, maybe eight, somewheres along there.

Q. I see. And finally the proof was accepted?

A. Yes, sir.

Q. And you sold the claim to Kester and Kettenbach? A. Yes, sir.

Q. And you had no agreement to sell it to anybody before that time? A. No, sir, we didn't.

Q. Now, I will ask you to look at this deed, Mrs. Jolly and state whether or not you recognize that. (Exhibiting document to the witness, [2404—2074] who examined the same.) A. Yes, sir.

Q. That deed was signed by you, was it?

A. Yes, sir.

Q. I notice that it is witnessed by Charles E. Loney and W. J. Todd, and acknowledged before W. J. Todd. Does that refresh your recollection now so that you can remember where that deed was executed?

A. Yes, sir; it must have been at Mr. Loney's place. I can't think it was anywhere else. I am not sure whether it was or not, but I think it was, because I think my sister was sick at the time when they came there with some papers, and we lived about a quarter of a mile from them, and they sent word for us to come down and make out these papers.

Q. I will ask you, Mrs. Jolly, if you don't remember that you got about \$225.00 for your claim?

A. No, I don't think I did. She got a little more than I did, because her claim was a little better than

(Testimony of Mrs. Effie A. Jolly.)

mine. It might have been a little over \$200.00.

Q. I see that the consideration mentioned in the deed was \$900.00?

A. Yes, and hers is \$950.00, I think.

Q. And hers was \$950.00? A. Yes, sir.

Q. Now, that included the money that Mr. Steffey had let you have to prove up on and for expenses?

A. Yes, sir.

Q. And \$200.00 location fee? A. Yes, sir.

Q. And I will ask you if you don't remember that it also included \$75.00 attorneys' fees for Mullen & Kasberg, for appearing in the contest when the claim was held up? A. Well, I don't remember.

Q. And which left about \$220.00 or \$225.00 for you?

(No answer.) [2405—2075]

Q. And that Mrs. Loney got \$250.00?

A. No, I didn't get that much I don't think. It was a little better than—something like a little better than \$200.00, or about \$200.00, I know; I don't know just what it was now.

Q. Anyway your claim was sold for \$900.00?

A. Yes, sir.

Q. And after the amounts were paid, what you owed was taken out, and you got the balance, whatever it was?

A. Yes, sir, whatever it was, but I don't remember just exactly now what it was.

Q. Then, the affidavit you made when you filed on the land, "that I have made no other application under said acts; that I do not apply to purchase the

(Testimony of Mrs. Effie A. Jolly.)

land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it? A. Yes, sir.

Q. And I will ask you to examine that affidavit, and state whether or not that is the affidavit you say you signed after you signed the deed. (Handing same to witness, who examined it.)

A. Yes, sir; it was.

Q. The statements contained in that affidavit were true, were they? A. Yes, sir; they were.

Mr. TANNAHILL.—The defendants offer in evidence the affidavit just identified by the witness, and ask that it be marked the defendants' proper exhibit.

Said affidavit was thereupon marked by the Reporter as Defendants' Exhibit "A-1." [2406—2076]

Mr. TANNAHILL.—Q. Mrs. Jolly, if someone had offered you, say, \$1,000.00 or more, or any considerable sum more for your claim, after you made your final proof, you would have felt perfectly justified in selling it to them, and paying Mr. Steffey the money that you had borrowed from him, and his location fee, would you not?

A. Why, yes, sir; I think I would.

Q. You didn't consider that Mr. Steffey was under

(Testimony of Mrs. Effie A. Jolly.)

any obligations to purchase your claim unless he wanted to?

A. No, sir; after I had paid him his money that was owing to him—that belonged to him.

Q. And the only obligations that you felt under to Mr. Steffey was to repay him the money you had borrowed from him? A. Yes, sir.

Q. And pay him his location fee?

A. Yes, sir.

Q. I understood you to say that your best recollection was that you met Mr. Dwyer in relation to this deed when you executed the deed. Now, I will ask you if you are not mistaken in your impression that Mr. Dwyer had anything to do with the execution of the deed, or handing it to you, or the affidavit?

A. Well, I met him, but to say when and where it was I couldn't say. I know where it was; it was at home I can remember, but I couldn't say whether I met him at Mr. Loney's or not, but we lived right on the road there, and he—

Q. — and he stopped at your place?

A. Oh, he did, once in a while; but to say where or when it was I don't know now.

Q. The reason I am asking you particularly now is, that Mr. Dwyer says he never met you, either in relation to the deed or the affidavit.

A. Well, he may not have, I wouldn't say to that for sure. It has been so long ago that I wouldn't like to say. [2407—2077]

(Testimony of Mrs. Effie A. Jolly.)

Redirect Examination.

(By Mr. GORDON.)

Q. Your best impression is, though, that he presented the deed, isn't it?

A. Well, I'm sure I couldn't tell you that.

Q. Mrs. Jolly, the deed has a consideration of \$900.00 in it. You didn't figure up what that \$900.00 was for, did you? A. Sir?

Q. The deed shows a consideration of \$900.00. You didn't figure up what the \$900.00 was for at any time, did you? A. No, sir.

Q. And I understood you to say that when you signed the deed, nothing was said about the money that was due and owing to Steffey.

A. No, sir; not at that time.

Q. When you made the deed, what was your understanding as to how Steffey was to be paid?

A. Well, there was nothing said as to when he was to be paid. I supposed that he would get his fee when everything was settled up.

Q. Well, wasn't it all settled up when you signed the deed?

A. Yes, sir; everything then was completed.

Q. Now, didn't you feel under some obligations to Mr. Steffey to let him have this land?

A. Well, I don't know as we should have felt under any obligations to him. Of course, he went and located us, and we felt under obligations in that way; but if he got his money that was coming to him I don't know that we should have felt under obligations to him.

(Testimony of Mrs. Effie A. Jolly.)

Q. But he hadn't gotten his money when you sold?

A. No, he hadn't; but if we turned around and paid him his money that—

Q. Well, when you signed that deed, didn't you think you was selling to someone that Steffey was representing? [2408—2078]

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—Please read that question, will you?

Mr. GORDON.—Q. When you signed the deed, didn't you think you were selling to someone that Steffey was representing?

A. Yes, sir; I thought I was then, of course.

Q. I will ask you whether or not you would have signed that deed at that time if you had not thought that?

A. Well, yes, I suppose we would have signed it.

Q. Well, I mean if I was there, and had come with that deed and had not said anything but sign it, would you have signed it for me?

A. Well, we wouldn't, of course, under those circumstances.

Recross-examination.

(By Mr. TANNAHILL.)

Q. You understood that Mr. Steffey had sent the deed there to Mr. Todd for you to sign, did you not?

A. Yes, sir.

Q. And if anyone had sent the deed there to Mr. Todd, and they had the money to turn over for the land, you would have sold to them, would you not? You would have felt justified in signing the deed?

(Testimony of Mrs. Effie A. Jolly.)

A. Well, there was nothing said to that part, as to who we were to sell to or anything about it; but I suppose we really felt under obligations to sell to them.

Mr. GORDON.—Q. To sell to who?

A. Oh, to the Kettenbach and Kester, I suppose, that we did sell to. They located us.

Mr. TANNAHILL.—Q. Well, they had nothing to do with locating you, did they? A. No, sir.

Q. And when he located you, Steffey never said anything about having any business relations with them, did he? [2409—2079]

A. No, sir; he didn't.

Q. And the fact of the matter was that they had nothing to do with the locating of you on the land, or with furnishing you the money, so far as you know?

A. Well, I couldn't tell about that— not that I know of.

Q. And the only obligations that you felt under to Mr. Steffey was to let him have the land if he wanted it? A. Yes, sir.

Q. In other words, you felt under some obligations to give him a preference right of buying it, because he had loaned you the money, and he had located you on the land? A. Yes, sir.

Q. But you didn't feel under obligations enough to give him the preference right if there was somebody who would give you more for the land than he was willing to pay you, did you? A. No, sir; I didn't.

Q. And you didn't feel that he was under obligations to buy it if he didn't want to? A. No, sir.

Mr. TANNAHILL.—That's all.

Mr. GORDON.—That's all. [2410—2080]

**[Testimony of Mrs. Mary A. Loney, for
Complainant.]**

Mrs. MARY A. LONEY, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Mary A. Loney, are you?

A. Yes, sir.

Q. Do you know Mr. William Dwyer, one of the defendants here?

A. Yes, sir; I know him when I see him.

Q. Did you ever transact any business with him?

A. He was at our place once.

Q. What for?

A. He was there to get some numbers of the land, I think, as well as I remember.

Q. Relative to whose land?

A. I think mine, and I don't know whether Mr. Loney's or not. I am not certain which it was, but I think it was to mine.

Q. You are the wife of Charles E. Loney?

A. Yes, sir.

Q. The sister of Mrs. Effie A. Jolly?

A. Yes, sir.

Q. And Mrs. Jannie Myers? A. Yes, sir.

Q. And did one of your sisters marry Mr. Clinton E. Perkins? A. Yes, sir.

Q. And another one married a Mr. Gaffney?

A. Yes, sir.

(Testimony of Mrs. Mary A. Loney.)

Q. What was his first name? A. John.

Q. And another married a Mr. *Abrames*?

A. Yes, sir.

Q. What was his first name?

A. Walter. [2411—2081]

Q. And another sister married Mr. Flemming Smith? A. Flemon Smith, yes, sir.

Q. Do you know Mr. Harvey J. Steffey?

A. Yes, sir.

Q. Did you know him in March, 1906?

A. I think so.

Q. And you and your sister, Mrs. Jolly, filed on timber claims at the same time? A. Yes, sir.

Mr. TANNAHILL.—We object to any evidence of the witness relative to her filing on a timber claim, in so far as the evidence relates to bills No. 388 and 406, upon the ground that the entry of the witness is not involved in these two particular actions, and it is irrelevant and immaterial.

Mr. GORDON.—Q. And did you go to view the claims at the same time? A. Yes, sir.

Q. And at the time that you filed, did you know that Mr. Myers had filed on a timber claim?

A. Yes, sir.

Q. And did you talk over the arrangements at that time that he had made with Mr. Steffey?

A. Talk over the arrangements?

Q. Yes, that Mr. Myers had with Mr. Steffey, relative to taking up his timber claim, with Mr. Myers?

A. Nothing particular, no. He just told me that

(Testimony of Mrs. Mary A. Loney.)

he had taken a claim.

Q. And did he tell you that Mr. Steffey would furnish him with money with which to take a claim?

A. No, sir.

Q. Did you know that a few days before you had taken up a claim that Mr. Steffey had located Mrs. Jannie Myers on a claim, and she had [2412—2082] filed?

A. I don't remember what time it was—how long it was before.

Q. Well, had you, before you filed, talked with any of your sisters that had taken up claims, or your brothers in law whom we have named, who had taken up claims, relative to where they had gotten the money with which to pay the expenses, etc.?

A. I don't think so. Not that I remember of.

Q. At the time you first talked with Mr. Steffey about taking up a claim, did you have the money with which to purchase a timber claim? A. Sir?

Q. At the time you first talked with Mr. Steffey about taking up a timber claim, did you at that time have the money with which to purchase a timber claim? A. No, sir.

Q. At the time of the first conversation you had with Mr. Steffey relative to taking up a timber claim, did you know where you were to get the money with which to pay your expenses and to take up a timber claim? A. No, sir.

Q. When did you learn where you were to get the money? A. I don't remember just when.

Q. Well, you went out with Mr. Steffey to look at

(Testimony of Mrs. Mary A. Loney.)

the timber claim, did you? A. Yes, sir.

Q. Now, how did you happen to go with him to look at the timber claim?

A. Why, I had sent him word that I wanted to take a claim.

Q. By whom did you send him word?

A. I had sent him word by Mr. Myers.

Q. Now, how did you happen to send him word by Mr. Myers?

A. Well, I don't know just how I did happen to.

Q. Had Mr. Myers been telling you about taking up a timber claim himself? [2413—2083]

A. Yes, sir, I think he explained that to me.

Q. And did he tell you what he was going to do with his timber claim?

A. No, not in particular, no.

Q. Well, what did he in general say, then?

A. Well, I don't remember just what he said.

Q. Did he tell you where you could get the money with which to take up a timber claim? A. No, sir.

Q. Did he tell you where he thought you could get the money?

A. No, he didn't tell me where he thought I could get it.

Q. And Mr. Steffey said nothing about it, at the time you first talked with him?

A. I don't remember whether he did the first time that I talked with him or not, whether it was when we went to look at the land or not.

Q. Well, how long after you first talked to him did you go to look at the land?

(Testimony of Mrs. Mary A. Loney.)

A. I don't know. I think about a week. I don't remember.

Q. Well, when you started out with him to look at the land, was there any talk at that conversation relative to where you would get the money to carry out this investment?

A. I don't know whether it was at that time or not; I think it was about that time, though, that he said he could get the money, but he didn't say where he could get it.

Q. And did he tell you what you would get out of your claim?

A. He told us about what we would get, yes.

Q. And that was while you were going to see the land? A. I think it was; I am not sure.

Q. And what did he tell you you could get out of it? A. What, did you say?

Q. Yes, out of it.

A. He said we would get between \$200.00 and \$250.00. [2414—2084]

Q. And what were you to do with the claim to get that \$250.00?

A. He never said anything to do with it.

Q. You were not to keep it to make that \$250.00, were you? A. No, sir, we didn't expect to.

Q. And what was your understanding as to whom you were to convey it to make that \$250.00?

A. I didn't know who was to get it.

Q. I know you didn't know who was to get it, but who did you understand was to get it?

A. I didn't know. Nobody had ever told me, and

(Testimony of Mrs. Mary A. Loney.)

I didn't know who was to get it.

Q. Well, who was to sell it for you?

A. I suppose Mr. Steffey was.

Q. I will ask you whether or not Mr. Steffey wasn't at that time living at the house of Mrs. Gaffney?

A. I couldn't say. He was at Pierce, I think, or up that way; but I don't know whether he was living there at the house all the time.

Q. Was anything said between you and Mr. Steffey as to paying a location fee?

A. He said he would furnish me the money.

Q. Was the question of the location fee mentioned? A. Sir?

Q. Was the question of the location fee mentioned?

A. I think he just said he would furnish me the money. I don't know that it was mentioned. I am not certain.

Q. Now, do you remember the first talk, or the talk that you had with Mr. Steffey, either the first time you talked with him about the timber claim, or the time you went to view the timber claim, as to whether or not anything was said as to whether an agreement could be made to sell the land?

A. He said that he couldn't make any agreement; I remember that, but I don't just— [2415—2085]

Q. He said he couldn't make a proper agreement with you to purchase the land?

A. He said he couldn't make any agreement.

Q. Now, do you know what brought about that

(Testimony of Mrs. Mary A. Loney.)

conversation? A. No, sir.

Q. Were you wanting him to make an absolute agreement as to who would purchase your land, before you entered it?

A. No, sir, I never asked him.

Q. Now, did you know at the time you located on this timber land as to whether or not any relations existed between Mr. Dwyer and Mr. Steffey, in a business capacity?

A. I don't know. I think I had heard that they were in business together.

Q. In what business were they in together?

A. Locating.

Mr. TANNAHILL.—I move to strike out the answer of the witness, upon the ground that it is hearsay, and not the best evidence, and irrelevant and immaterial.

Mr. GORDON.—Q. Did Mr. Steffey tell you that?

A. No, sir.

Q. Who told you that? A. I don't remember.

Q. Can't you think who it was?

A. No, I don't know as I can.

Q. Now, you and Mrs. Jolly went up to the timber together, did you not, with Mr. Steffey?

A. Yes, sir.

Q. And you both came down to the land office together to make your original filing, did you?

A. Yes, sir.

Q. And who came with you besides Mrs. Jolly?
[2416—2086]

A. Mr. Steffey went down.

(Testimony of Mrs. Mary A. Loney.)

Q. With you? A. Yes, sir.

Q. I show you timber and stone lands sworn statement of Mary A. Loney, dated March 23d, 1906, and ask you if that is your signature to that paper, and whether or not you filed it in the land office at Lewiston, Idaho, at the date it bears? A. Yes, sir.

Q. Did you say yes? A. Yes, sir.

Q. And filed it in the land office at Lewiston?

A. Yes, sir.

Q. I show you the nonmineral affidavit signed Mary A. Loney, dated March 23d, 1906, that is signed by Mary A. Loney, and ask you if that is your signature to that paper? A. Yes, sir.

Q. I show you the testimony of Mary A. Loney, given at the final proof, June 12th, 1906, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. I show you the cross-examination of Mary A. Loney, given at the final proof, and ask you if you signed that paper? A. Yes, sir.

Q. Now, when you came down to Lewiston to file those papers you have just identified (the sworn statement and the nonmineral affidavit), who paid the expenses of that trip?

A. Mr. Steffey furnished me the most of the money, and I had some.

Q. And he furnished you the money for yourself and also for Mrs. Jolly at the same time, did he?

A. Yes, sir.

Q. And he gave you that money before you left your home, did he not? [2417—2087]

(Testimony of Mrs. Mary A. Loney.)

A. No, sir; he didn't give us any before we left home.

Q. Where did he give it to you?

A. In Lewiston.

Q. In Lewiston? A. Yes, sir.

Q. He gave it to you before you filed, did he not?

A. I think so.

Q. And who prepared that sworn statement and the nonmineral affidavit that you have identified?

A. I don't remember when I signed that. When was that signed?

Q. It was the day that you went to the land office the first time. The first time you filed any papers in the land office relative to this claim. The statement and the nonmineral affidavit I referred to were the papers filed that day. Now, who prepared them for you, or who had them prepared for you?

A. I don't know, unless it was Mr. Steffey. I don't remember.

Q. You didn't pay any fee for having them prepared, did you? A. No, sir.

Q. And when you went to the land office and filed those papers, who paid the fee in the land office?

A. I don't remember whether I paid it—I don't remember whether I did or not.

Q. Did Mr. Steffey go with you?

A. To the land office?

Q. Yes. A. I think so.

Q. Do you know whether or not he paid it?

A. No, I don't know whether he paid it, or whether he gave me the money.

(Testimony of Mrs. Mary A. Loney.)

Q. Well, he either paid it or gave you the money to pay it, didn't he?

A. Yes, sir, I think so. [2418—2088]

Q. And was it on that occasion that he told you that he would advance you all the expenses, or had he told you that before?

A. I think it was before.

Q. And did he tell you that he would furnish you the money for final proof before that?

A. I don't know, but I think so.

Q. And was it at the same time that he told you that, that he told you about how much you would get for your claim?

A. Well, I am not certain about that. It has been so long ago that I don't remember.

Q. And after you had made your filing you returned to your home, did you not? A. Yes, sir.

Q. And did you see Mr. Steffey between then and the time you made your final proof relative to your claim? A. I don't remember.

Q. And when it came time to make your final proof, you and Mrs. Jolly came down together again, did you? A. Yes, sir.

Q. Well, did they accept your proof on that occasion, or did they hold the thing off? You made your proof on that date set, did you? A. Yes, sir.

Q. And did you see Mr. Steffey on the day that you made your proof? A. Yes, sir.

Q. Did you meet him by appointment at Lewiston that day?

A. He was there at the land office.

(Testimony of Mrs. Mary A. Loney.)

Q. Well, did you meet him there by appointment?

A. I think he was in there.

Q. I know; but you came down from Fraser, didn't you, to Lewiston; is that right?

A. Yes, sir.

Q. And you didn't bring the money with you to make the proof, did [2419—2089] you?

A. No, sir.

Q. And you knew you was going to get the money from Mr. Steffey to make that proof? A. Yes, sir.

Q. Did he just happen to be in the land office, or did you have an appointment to meet him there to get the money?

A. I think he was one of my witnesses, if I ain't mistaken, and he was there.

Q. Well, did he give you the money in the land office with which to make your proof?

A. No, I don't think so.

Q. Where did he give it to you?

A. I think it was at a hotel.

Q. Was it the Bollinger Hotel?

A. No, I don't believe it was, as well as I remember.

Q. Did you go to the Lewiston National Bank to get this money, before you went to the Bollinger Hotel? A. Did I?

Q. Yes. A. No, sir.

Q. And how much money did Mr. Steffey give you the day you made proof? A. I don't remember.

Q. Wasn't it \$400.00?

A. \$400.00 or \$450.00, I don't know which.

(Testimony of Mrs. Mary A. Loney.)

Q. And who paid the expenses of you coming down from your home and your expenses while at Lewiston? A. I think he gave me the money.

Q. Did he give you the money for Mrs. Loney at that time?

A. Mrs. Jolly, you mean. I am Mrs. Loney.

Q. I mean Mrs. Jolly? [2420—2090]

A. I think so.

Q. Did you give him a note for the money he gave you? A. No, sir.

Q. Did you pay him any interest on the money?

A. No, sir.

Q. Was anything said as to the time you were to repay the money?

A. I was to pay it when I sold my claim.

Q. And then, you returned to your home after making your final proof? A. Yes, sir.

Q. And the money that Mr. Steffey gave you to make final proof, that is the same money you made your final proof with, is it not? A. Yes, sir.

Q. And did Mr. Steffey give you any other money before you made your final proof except the expense money that you have referred to? Did he advance you money from time to time?

A. Before I made proof?

Q. Yes.

A. I don't remember. I don't think so.

Q. Your claim was held up by the land office, was it not? A. Yes, sir.

Q. Do you know what it was held up for?

A. I know what they told us, I think I can tell

(Testimony of Mrs. Mary A. Loney.)

you. I don't know for sure now whether I can or not.

Q. What did they tell you?

A. It was on account of where I got my money to prove up on. They said that I didn't have any money in my own right to prove up on. Now, that isn't just the words they said.

Q. But the substance of the words?

A. Yes, as near as I can tell you.

Q. And did you employ an attorney?

A. No, sir. [2421—2091]

Q. Did you know that an attorney represented you in that case?

A. No, I don't know whether they did or not.

Q. Do you know whether Mr. Mullens' partner represented you in that case? A. No, sir.

Q. You didn't pay him, anyhow, did you?

A. No, sir.

Q. Then, you afterwards made a deed of this land, did you, Mrs. Loney? A. Yes, sir.

Q. And with whom did you negotiate the sale of it? A. I don't know. I don't remember.

Q. What is your best recollection?

A. Do you mean who brought the deed to me?

Q. Yes. A. Well, I don't remember.

Q. Was it William Dwyer?

A. No, sir; it wasn't him, I know.

Q. And are you sure about it, that it wasn't Mr. Dwyer?

A. Yes, sir, I am sure it wasn't Mr. Dwyer.

Q. Now, who was it?

(Testimony of Mrs. Mary A. Loney.)

A. I don't know, unless it was Mr. Steffey, or whether the deed was sent to me. I don't remember. I can't remember.

Q. And did you know Mr. Kester and Mr. Kettenbach? A. No, sir, I didn't.

Q. You knew that the deed you signed ran to them, didn't you? A. Yes, sir.

Q. Conveying the property to them?

A. I knew that.

Q. Was any explanation given you as to that?

A. No, sir.

Q. Was there anything said at the time you signed the deed as to [2422—2092] how much money was coming to you? A. Not that I remember of.

Q. You haven't any very distinct recollection of signing this deed, have you?

A. No, I haven't. I don't know whether I signed it at home or at Mr. Judd's.

Q. And did you ever return Mr. Steffey the money he advanced you for your final proof and your expenses in regard to initiating and completing this entry? A. No, sir.

Q. Has he ever asked you for it? A. No, sir.

Q. And before you signed the deed after you made proof, you had received some money from Mr. Steffey, had you not? A. I don't understand you.

Q. Between the time you made your proof and the time that you signed the deed you had received some money from Mr. Steffey, had you not, relative to this claim? A. I think so. I am not certain.

Q. Now, how much was given you for your claim?

(Testimony of Mrs. Mary A. Loney.)

How much actual money were you given?

A. I think about \$225.00, as well as I remember. It might have been—

Q. And who gave you that? A. Mr. Steffey.

Q. He had given it to you from time to time, had he?

A. No; I think he gave it to me most all—no, he didn't, either. I don't remember. It must have been at different times.

Q. Now, after the first conversation you had with him, in which he said you would get about \$200.00 out of your claim, was anything ever said after that relative to what you were to get out of your claim?

A. No, sir, I don't know that there was. [2423—2093]

Q. And when he had given you in installments enough to amount to \$200.00, you considered that you had conformed to your part of the arrangement, and he had completed his?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. Is that correct?

A. Please ask that question again.

The Reporter thereupon repeated said question, as follows:

“Q. And when he had given you in installments enough to amount to \$200.00, you considered that you had conformed to your part of the arrangement, and he had completed his?”

Mr. GORDON.—Q. Is that correct?

A. As well as I understand it, it is.

(Testimony of Mrs. Mary A. Loney.)

Q. And I will ask you whether or not, Mr. Loney, the whole transaction turned out as you expected it would from the first time you had your talk with Mr. Steffey relative to taking up a timber claim?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Did you know whether or not Mr. Steffey was assembling timber claims?

A. Was what?

Q. Assembling a number of timber claims—getting them together, with the idea of purchasing them? A. No, I didn't know.

Q. You knew that Mr. and Mrs. Myers had sold their claims to Mr. Steffey, didn't you?

A. Yes, sir, I heard them say so.

Q. And you knew that Mr. and Mrs. Jolly were intending to convey theirs to Mr. Steffey, didn't you?

A. I thought they were. Of course, I didn't know whether they [2424—2094] were or not.

Q. And when you went to view the land did you have in mind any person you expected to convey your claim to? A. No, sir.

Q. Nobody whatever?

A. I didn't know who would get it, or whether we would have it.

Q. You didn't know positively? A. No, sir.

Q. But did you have in your mind who you intended to convey it to?

A. No; I didn't know who would have it.

Q. Well, did you have in your mind any person

(Testimony of Mrs. Mary A. Loney.)
who would tell you who to convey it to?

A. I supposed Mr. Steffey would.

Q. In other words, you knew that Steffey expected to get that claim, didn't you, Mrs. Loney?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—No, I didn't know it.

Mr. GORDON.—Q. Well, why did you expect that he was going to furnish you all the money and furnish your expenses down there to the land office, and the money for final proof, if he wasn't going to get the claim?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Answer the question.

WITNESS.—Read that again, please.

The Reporter thereupon repeated said question, as follows:

“Q. Well, why did you expect that he was going to furnish you all the money and furnish your expenses down there to the land office, and the money for final proof, if he wasn't going to get the claim?”

WITNESS.—I didn't know whether he would get it or somebody else. I didn't know who would get it.

Mr. GORDON.—Q. Well, did you understand that he was to get it, or somebody that [2425—2095] he was representing would get it?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—I supposed that he would get it.

Mr. GORDON.—Well, when you say you supposed, I will ask you whether that is the same—if

(Testimony of Mrs. Mary A. Loney.)

that is your understanding?

Mr. TANNAHILL.—The same objection.

WITNESS.—I didn't know whether he would get it or not, of course.

Mr. GORDON.—Q. And didn't you know that either he or somebody he represented would get it?

Mr. TANNAHILL.—The same objection.

WITNESS.—I supposed he would.

Mr. GORDON.—Q. That is what you thought, wasn't it? A. Yes, sir.

Q. And that is what you intended to do with the claim if he would take it; is that right, Mrs. Loney?

Mr. TANNAHILL.—The same objection.

WITNESS.—Why, I don't know I just supposed he or somebody else would get it, of course.

Mr. GORDON.—Q. Well, I know, he or somebody else. Now, who was the somebody else?

A. I don't know.

Q. Well, it was somebody that he was to represent? A. I supposed it would be him or—

Q. Well, didn't you know that?

Mr. TANNAHILL.—The same objection.

WITNESS.—No, I didn't know it. I didn't know who he was representing.

Mr. GORDON.—Q. Well, didn't you know he was representing somebody? [2426—2096]

Mr. TANNAHILL.—The same objection.

WITNESS.—I supposed he was. I didn't know that.

Mr. GORDON.—Q. Well, didn't you think he was?

(Testimony of Mrs. Mary A. Loney.)

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And wasn't that talked over when he told you that he couldn't make an agreement with you?

Mr. TANNAHILL.—The same objection.

WITNESS.—No, sir.

Mr. GORDON.—Q. And wasn't that statement made by him just to make the whole transaction appear regular?

Mr. TANNAHILL.—The same objection.

WITNESS.—Sir?

Mr. GORDON.—Q. Wasn't that statement made by him just to make you think the whole transaction was regular?

Mr. TANNAHILL.—The same objection.

WITNESS.—I don't know.

Mr. GORDON.—Q. If you hadn't intended to convey that land to Mr. Steffey, or to whomsoever he represented, and hadn't thought that he or whoever he represented, would purchase it, would you have taken it up? Would you have made the entry?

Mr. TANNAHILL.—I object to that as leading and suggestive.

WITNESS.—No, sir.

Mr. GORDON.—Q. You couldn't have made it, could you, Mrs. Loney? A. No, sir.

Q. And it was only on the arrangement you had with him that made [2427—2097] it possible for you to take up a timber claim?

Mr. TANNAHILL.—The same objection.

(Testimony of Mrs. Mary A. Loney.)

WITNESS.—Sir?

Mr. GORDON.—Q. It was only on the arrangement that you had with him that made it possible for you to take up a timber claim? A. Yes, sir.

Q. You and Mrs. Jolly had talked this matter over before you went to view the land, hadn't you?

Mr. TANNAHILL.—I object to that as leading and suggestive.

WITNESS.—We may have done. I don't remember.

Mr. GORDON.—Q. Did you tell your husband that Mr. Steffey was to furnish you the money to take up a timber claim?

Mr. TANNAHILL.—I object to that as leading and suggestive.

WITNESS.—I don't remember. I suppose I did. I don't remember.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Mary A. Loney, dated March 23d, 1906, the notice for publication, the nonmineral affidavit, bearing the same date, the testimony of Mary A. Loney given at the final proof, the cross-examination of Mary A. Loney, of the same date, all of which papers have been identified by the witness, the testimony of the witnesses given at the final proof, the cross-examination of the witnesses at final proof, the receiver's receipt and the register's certificate, dated December 3d, 1906, a certified copy of the patent issued to Mary A. Loney, and dated September 19th, 1907, all relating to the entry of the northeast quarter of the northeast quar-

(Testimony of Mrs. Mary A. Loney.)

ter of section 18, and the west half of the northwest quarter and the northwest quarter of the southwest quarter of section 17, in township 36 north, of range 5 east, of Boise meridian; also, a certified copy of a deed made and executed by Mary A. Loney and Charles E. Loney, conveying to George H. Kester and William F. Kettenbach, in consideration of \$950, the northeast quarter of the northeast quarter of section 18, and the [2428—2098] west half of the northwest quarter and the northwest quarter of the southwest quarter of section No. 17, in township 36 north, of range 5 east, of Boise meridian, executed and acknowledged by Mary A. Loney and Charles E. Loney February 28th, 1907, before William J. Todd, Notary Public for Nez Perce County, Idaho, and recorded at the request of C. W. Robnett March 4th, 1907, in the office of the Recorder of Nez Perce County, Idaho.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of any of the papers in evidence in support of bills No. 388 and 406, on the ground that the entry of the witness is not involved in either of these actions, and they are irrelevant and immaterial. And the defendants further severally object to the admission of any of the final proof papers in evidence in support of either of the actions, upon the ground that they are matters occurring long after the filing of the sworn statement, relating to the final proof only, and are irrelevant and immaterial.

(Testimony of Mrs. Mary A. Loney.)

Said documents were thereupon marked by the Reporter as Exhibits 100, 100A, 100B, 100C, 100D, 100E, 100F, 100G, 100H, 100I, 100J, 100K, 100L, 100M, 100N, 100-O, 100P, 100Q, and 100R.

Mr. GORDON.—Q. Mrs. Loney, I show you two checks, marked Plaintiff's Exhibits 61 and 62, being dated respectively December 4, 1906, payable to the order of Mary A. Loney in the sum of \$50.00, and signed H. J. Steffey, and one dated February 28th, 1907, payable to the order of Mary A. Loney, in the sum of \$25.00, and signed H. J. Steffey, and ask you whether or not Mr. Steffey gave you those two checks in connection with your timber land entry?

A. When is this one dated?

Q. February 28th, 1907.

A. I guess those are the checks all right, but I don't remember [2429—2099] them.

Q. And that is your endorsement on the back of each of them, is it? A. Yes, sir.

Q. How long after you signed the deed did you get the balance of the money that was coming to you for your claim?

A. I don't remember how long it was.

Q. Was it a month or two, or a week, or how long?

A. Oh, it was longer than that.

Q. And who gave you that—Mr. Steffey?

A. Yes, sir.

Q. And do you remember how much the last amount was which you received? A. No, I don't.

Q. Well, haven't you an idea of how much it was?

A. Not unless it was that \$50.00 check. I don't

(Testimony of Mrs. Mary A. Loney.)

know whether it was or not.

Q. Well, that is dated the date that the deed is dated.

A. Well, that isn't the one, then.

Q. He gave you \$50.00 after that, did he?

A. I am not certain. I don't remember.

Q. What is your best recollection?

A. Well, it is pretty hard to say, because I can't remember, it has been so long ago.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Loney, as I understand it, after you went to look at the claim there was something said about what you would be able to get out of it?

A. Yes, sir.

Q. Do you remember just when it was? Was it when you came back and got down to Greer, or on your way to Lewiston?

A. I don't remember just when it was. [2430—2100]

Q. I see. You don't remember the circumstances of that coming up, do you, Mrs. Loney?

A. I remember speaking about it. I think it was as we came down from the claim.

Q. And do you remember that you said something to Mr. Steffey about what the claim was worth, and what you could get out of it, or what you could sell it for, or something of that kind, that caused him to tell you about what you would be able to get?

A. I don't remember.

Q. Now, you say that he told you that you ought

(Testimony of Mrs. Mary A. Loney.)

to be able to get from \$200.00 to \$250.00 out of it, over and above what it had cost you? A. Yes, sir.

Q. And at one time you told him that you didn't have the money—money enough to pay your expenses of the taking up of the land, did you not?

A. Yes, sir.

Q. And it was your understanding that you were borrowing the money from him to pay these expenses, and to pay for the land, and that you would pay him back as soon as the claim was sold?

A. Yes, sir.

Q. And he never asked you for a note, did he?

A. Sir?

Q. He never asked you to sign a note for it, did he?

A. No, sir.

Q. If he had asked you to sign a note, you would have signed it, wouldn't you? A. Yes, sir.

Q. Now, you also understood that Mr. Steffey was getting a location fee of \$200.00, did you not?

A. Yes, sir, I supposed he was.

Q. And you supposed that that was his interest in having you take up the claim? [2431—2101]

A. Yes, sir.

Q. And his interest in furnishing you the money, so that he could make that \$200.00?

A. Yes, sir.

Q. And he also understood that he was to get that \$200.00, and also get this money back that he had let you have, when the claim was sold?

A. Yes, sir, I supposed he did.

Q. That was your understanding about it, any-

(Testimony of Mrs. Mary A. Loney.)

way? A. Yes, sir.

Q. Now, do you remember that after you had made your proof that Mr. Steffey told you that your claim was a little better claim than the others; that it was quite a bit better claim; and that you would get a little more than the others did?

A. He told me that mine was a little better than Mrs. Jolly's.

Q. Better than Mrs. Jolly's? A. Yes, sir.

Q. And you did get more for your claim than Mrs. Jolly got for hers?

A. A little more, I think, if I remember right.

Q. I see, Mrs. Loney, that the consideration in the deed is \$950. I will ask you if you remember that that was made up of the money that Mr. Steffey had let you have, and the \$200.00 of Mr. Steffey for a location fee, and \$75.00 which Mr. Steffey paid to Mullen & Kasberg for looking after your claim when it was held up, or contested, and the \$225.00 that was paid to you? Do you remember of that being figured in that way? A. No, sir, I don't remember.

Q. It might have been figured in that way?

A. It might have been. I don't remember.

Q. Now, do you remember where you signed the deed? It is witnessed by James T. Jolly and W. J. Todd. (Exhibiting deed to witness, who examined the same.) After examining the deed, do you remember where you signed it? [2432—2102]

A. It must have been signed at home—at our house.

Q. Now, you stated in response to Mr. Gordon's questions that you expected that Mr. Steffey would

(Testimony of Mrs. Mary A. Loney.)

get the claim, or someone else would get it. When you took the claim up you intended to sell it to somebody, didn't you? A. Yes, sir.

Q. But you didn't know who you would sell it to?
A. No, sir.

Q. Did you expect that Mr. Steffey would help you find a buyer? A. Yes, sir.

Q. And you sort of looked to him to find a buyer for you for the land? A. Yes, sir.

Q. But you had no agreement with him to sell it to him, or to anyone else in particular, did you?

A. No, sir.

Q. And you had no definite agreement with him about what amount you was to receive for it?

A. No, sir.

Q. If you had had an opportunity to have sold it to someone else for \$500.00 more than you received for it, or was to receive, you would have felt at liberty to have sold it to someone else, and paid Mr. Steffey the location fee, and paid him back his money that you had received from him, would you not?

A. Yes, sir.

Q. And you would not have felt that Mr. Steffey was under any obligations to purchase the land if he didn't want to, would you? A. No, sir.

Q. Now, the affidavit that you made when you filed your sworn statement, as follows: "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and [2433—2103] benefit, and that

(Testimony of Mrs. Mary A. Loney.)

I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it not? A. Yes, sir.

Q. I will show you the affidavit marked Defendants' Exhibit "Y," purporting to have been signed by Mary A. Loney on the 28th of February, 1908, and ask you to examine that, and state if you remember the circumstances of your signing that? (Exhibiting document to witness, who examined the same.)

A. That is my signature, but I don't remember just the time or place that I signed it.

Q. You don't remember who brought you the affidavit for you to sign it?

A. I think it was Mr. Todd.

Q. You think it was Mr. Todd? A. Yes, sir.

Q. The statements contained in that affidavit are true, are they? A. I didn't read it all.

Q. Just look over it.

(The witness read said affidavit in full.)

Q. The affidavit is true, is it, Mrs. Loney?

A. Yes, sir.

Q. Now, you have stated that Mr. Dwyer came to your place at one time. I will ask you if he didn't stop there to get the numbers of your land when he went up to look at the land, before you executed the deed for it?

A. I don't know. I don't remember when it was.

(Testimony of Mrs. Mary A. Loney.)

Q. Do you remember that it was after you had made your final proof?

A. No, I don't remember that, either. [2434—2104]

Q. What is your best recollection about it, Mrs. Loney?

A. Well, I don't remember the time at all. That is, I just remember him stopping there and getting the numbers, but I don't remember when it was at all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mrs. Loney, do you remember that I asked you on the examination in chief whether anything was said about paying Mr. Steffey a location fee, or paying anybody a location fee, and you said there wasn't anything said about it?

A. Well, I don't remember whether there was or not. I couldn't be certain whether there was or not.

Q. This affidavit that you have identified here as having been signed by you on the 28th of February, 1907, do you remember of having read that affidavit before?

A. No, I don't know whether I read it or not.

Q. You were ill at your home at the time you signed that affidavit, weren't you?

A. I wasn't ill at the time. I had been; I had had the earache, and couldn't get out.

Q. And you signed it just because it was presented to you, and you were asked to sign it; is that correct?

A. No. I think I read it at the time. I am not certain.

(Testimony of Mrs. Mary A. Loney.)

Q. Was there any reason given you why they wanted you to sign that affidavit?

A. Yes, I think there was, but I don't remember it now.

Q. Wasn't it because they were investigating timber land frauds at that time, and they said they wanted your affidavit for that purpose?

A. I don't remember.

Mr. GORDON.—That's all.

Mr. TANNAHILL.—That's all. [2435—2105]

[Testimony of Charles E. Loney, for Complainant.]

CHARLES E. LONEY, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Charles E. Loney?

A. Yes, sir.

Q. And you are the husband of Mrs. Mary A. Loney, who has just testified? A. Yes, sir.

Q. And you resided at Fraser, Idaho, in April, 1906, did you not? A. Yes, sir.

Q. Did you know Mr. William Dwyer, one of the defendants, in April, 1906?

A. No, sir, I was not acquainted with Mr. Dwyer at all; I wasn't at that time.

Q. You are a brother in law of Charles S. Myers, are you? A. Yes, sir.

Q. And you knew Mr. Harvey J. Steffey at the time you took up a timber claim, did you not?

A. Yes, sir, I knew Mr. Steffey.

(Testimony of Charles E. Loney.)

Q. Had you talked to Mr. Myers prior to the entry you made on a timber claim about the arrangements he had made about taking up a claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim in so far as it relates to bills No. 388 and 406, upon the ground that the entry is not involved in these particular actions, and is irrelevant and immaterial.

A. Well, Myers he told me that Steffey was locating them on timber claims, was all.

Q. What else did he say about it?

A. I don't know that he stated anything else to me about it. [2436—2106]

Q. Did he say anything about where he had gotten his money to make his application and the expenses of making the application and final proof money?

A. I believe he did state through Steffey.

Q. He said he had gotten it through Steffey?

A. Yes, sir.

Q. Now, had you talked with Mr. and Mrs. Jolly before you went to view this land as to any arrangement they had as to where they would get the money to make their timber and stone entry?

A. I and Mr. Jolly went together.

Q. Did you and he talk over that matter?

A. No, we didn't; not that I remember.

Q. Did you know where you were to get the money? Did you know before you went to view the land? A. I didn't understand.

Q. Did you know where you were to get the money

(Testimony of Charles E. Loney.)

for your expenses of taking up a claim and paying the filing fees and for your final proof before you went to look at the land?

A. I knowed where I was to get my expense money; yes.

Q. Where were you to get that from?

A. Steffey said he would furnish it.

Q. Where were you to get the money for your final proof?

A. I didn't know just where I was to get that at the time.

Q. Didn't Steffey say anything about that?

A. Well, I supposed we was to get the money some way.

Q. How were you to get it?

A. Through Steffey.

Q. Did you have money with which to purchase a timber claim?

A. I had about \$150.00 of my own money, that was all I had. [2437—2107] I had that much cash.

Q. Now, what was your first talk with Steffey relative to the timber claim that you located on?

A. After I had located?

Q. Before you had located?

A. I don't know as I could state just what my first talk—I told him that if he found any timber claim that was worth taking that I would take it.

Q. How were you going to take it? Did you have any arrangement about money then? A. No, sir.

Q. Well, he took you up to see the timber claim,

(Testimony of Charles E. Loney.)

did he? A. Yes, sir.

Q. And he gave you your expenses to go down to the land office to file, didn't he? A. Yes, sir.

Q. How did he happen to give you your expenses to go to the land office and file?

A. I told him I didn't have the money to spare at that time.

Q. How much did he give you?

A. He gave me \$10.00 and told me to divide it up with Jolly.

Q. Did he go to the land office with you?

A. Yes, sir.

Q. Now, prior to going to the land office did he tell you that he would furnish you the money for final proof?

A. Before we went to the land office?

Q. Yes, the first time?

A. I think he did. I wouldn't be positive of that. The first—

Q. Let me ask you if you would have taken a claim up if he hadn't told you that?

A. No, I wouldn't have been very apt to, I don't think. [2438—2108]

Q. Before you went to view the land, and before you went to the land office to file any papers, the first time, was anything said as to what you were to get out of your claim?

A. We was under the impression that we was to get somewheres betwixt \$200.00 and \$250.00.

Q. Where did you get that impression?

A. Just through talk with—

(Testimony of Charles E. Loney.)

Q. With whom? A. Steffey.

Q. What were you to do with your claims to get that \$200.00 or \$250.00? A. We was to sell it.

Q. To whom?

A. I didn't know who these claims was to be turned over to; I didn't know whether he was the man that was going to get them or not, at the time.

Q. Was it your understanding that it was either Steffey or somebody he represented?

A. That was my understanding—just talk; there wasn't but very little said. I just drawed an idea from what he said.

Q. Wasn't it the policy to say as little about it as could be?

A. I guess it was, as far as I know.

Q. Now, I will ask you what your understanding was before you went to the land office to make your original sworn statement that you were to do with the land after you made your proof?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

Mr. GORDON.—What was your understanding?

A. What was my understanding as to what I was to do with this land after I made my final proof?

Q. Yes. [2439—2109]

A. There wasn't no understanding as to what I was to do with the land. There was no agreement or bargain of any kind made. Of course there was just a little talk, as I said, that I understood it that way; but as far as there was any bargain or agreement, there wasn't.

(Testimony of Charles E. Loney.)

Q. I haven't asked for a bargain or agreement, but I have asked what was your understanding with Steffey that you were to do with the land after you made final proof.

A. What I was to do with the land after I made final proof?

Q. Yes.

A. Well, as I say, I was to turn it over to someone, I didn't know who at that time.

Q. Who was to tell you who you were to turn it over to?

A. I didn't know who was to tell me that.

Q. Who did you understand?

A. I just supposed Steffey would be the man that would tell me.

Q. In other words, you understood that Steffey wanted this claim, and that it was either for himself or somebody that he represented. Did you understand that, Mr. Loney?

Mr. TANNAHILL.—We object to the question as leading and suggestive.

WITNESS.—Just state that again.

The last question was thereupon repeated by the Reporter.

A. I understood that he wanted the claim; of course I didn't know who it was for, but he would take it.

Q. And that was your understanding when you went up to look at the claim, wasn't it, Mr. Loney?

A. There was no understanding.

Q. Well, you had what you have stated in your

(Testimony of Charles E. Loney.)

mind? A. I had that in my mind, yes, sir.

Q. When you went to look at the claim?

A. Yes, sir, that was all. [2440—2110]

Q. And you intended to convey it when you got the final proof made to Steffey or whoever he represented, did you not, in consideration of this \$200.00?

Mr. TANNAHILL.—Objected to as leading and suggestive.

WITNESS.—Shall I answer that question?

Mr. GORDON.—Yes, sir.

A. Yes, sir, I intended to convey it to somebody.

Q. Wasn't this somebody either Steffey or whoever he represented?

Mr. TANNAHILL.—The same objection.

A. I didn't know whether it was Steffey, whether he was to take it up or who the man was, who the parties were.

Q. Somebody he was representing?

A. I supposed it was somebody he represented.

Mr. TANNAHILL.—I move to strike out the answer of the witness as to his supposition, as irrelevant and immaterial.

Mr. GORDON.—Did you meet Mr. Steffey at Lewiston when you went there to file your original papers? Or did he go down there with you?

A. He went down with me, with us that morning.

Q. From Fraser? A. From Greer.

Q. I show you timber and stone land sworn statement dated April 3, 1906, signed Charles E. Loney, and ask you whether or not you signed and filed that paper in the land office at Lewiston on or about the

(Testimony of Charles E. Loney.)

date it bears? That is the first paper you filed in the land office? A. This ain't the proof?

Q. No, this is the first paper.

A. I understood you—I thought you meant the proof.

Q. No. I am asking you if you signed that paper on or about the date it bears, and filed it in the land office. [2441—2111]

(No answer.)

Q. I will ask you if that is your signature to the paper I am showing you?

A. Yes, sir, that is my signature.

Q. And you filed that paper in the land office, did you not? A. Yes, sir, that is my signature.

Q. I show you nonmineral affidavit signed by Charles E. Loney, dated April 3, 1906, and ask you if you signed and filed that paper in the land office?

A. Yes, sir.

Q. I show you the testimony of Charles E. Loney at final proof, dated June 19th, 1906, and ask you if you signed and filed that paper in the land office?

A. Yes, sir, that is my signature.

Q. I show you the cross-examination taken of Charles E. Loney of the same date, and ask you if you signed that paper? A. Yes, sir.

Q. Who prepared those papers for you, the sworn statement and the nonmineral affidavit?

A. Who prepared them?

Q. Yes. A. Mr. Perkins, I think.

Q. What Mr. Perkins? A. Of Lewiston.

Q. A lawyer?

(Testimony of Charles E. Loney.)

A. I don't know whether he was a lawyer; if that is the paper I think it is, I think he was in the land office.

Q. Did he prepare those papers for you?

A. I think he did; I wouldn't be—

Q. Did Steffey go to the land office with you?
[2442—2112] A. Yes, sir; he was up there.

Q. Did you pay any fee for preparing those papers? A. No, sir; I don't think I did.

Q. Did you pay any fee for filing those papers and for the publication of this claim?

A. Yes, sir.

Q. How much did you pay? A. \$5.00.

Q. Where did you get that \$5.00?

A. I had that myself.

Q. Did Steffey pay you that back?

A. No, sir.

Q. Steffey only gave you the \$5.00 to pay your expenses down? A. Down, yes, sir.

Q. Now, it came time for you to make final proof; do you remember that occasion? A. Yes, sir.

Q. Where did you get the money with which you made your proof? A. I got it of Steffey.

Q. When did you get it?

A. The day I made final proof.

Q. Was that the same money that you paid for the land in the land office? A. Sir?

Q. That was the same money— A. Yes, sir.

Q. — that you took to the land office and paid in that day? A. Yes, sir.

Q. Do you remember how much it was?

(Testimony of Charles E. Loney.)

A. \$450.00, I believe, right along there. [2443—2113]

Q. Did you pay \$450.00 or wasn't it \$404.43 that you paid in the land office? A. \$404?

Q. Yes. Well, that is what the receipt was for.

A. I guess that is what it was all right.

Q. And Steffey gave you \$450.00, did he?

A. Yes, sir.

Q. You say that was the same morning you made your proof?

A. That was in the afternoon, the same day.

Q. Did you go directly from the place Steffey gave you the money to the land office and pay that money in?

A. No; I was around town there a couple of hours; I don't know just how long.

Q. You used the same money, did you not?

A. I used the same money, or part of it; of course I had some of my own money. I couldn't say just which I used; I used that much money.

Q. How much did you have of your own?

A. I had \$150.00.

Q. Wasn't anything said as to what you should say as to where you got the money, between you and Steffey? A. Yes, sir.

Q. Do you remember what you said in the land office? A. Yes, sir.

Q. What did you say?

A. That it was my money.

Q. What else?

A. How long I had had it in my possession.

(Testimony of Charles E. Loney.)

Q. Yes.

A. I don't know just how long I did say I had had it in my possession, all of it. [2444—2114]

Q. Had you sold any property recently?

A. Yes, sir; I had just collected a note for a boiler and engine.

Q. Was that what the \$150.00 was?

A. Yes, sir; that was what it was.

Q. Do you remember making this answer: "I sold property I had. Had it since Sunday when I got the money on the note that was due."

A. That was the note I got. I had a note there due. I got it on a Sunday.

Q. Did you give Steffey a note for the money you got from him? A. No, sir, I did not.

Q. Did you pay him any interest on the money?

A. No, sir.

Q. Was anything said as to when you would repay it? A. There was not.

Q. And was anything ever said to you about paying a location fee?

A. I don't believe there was; I am not positive about that.

Q. Did you ever meet Mr. William Dwyer in this transaction at all? A. No, sir, I did not.

Q. Did he ever come to see you about the timber claim? A. He never did.

Q. How long after you made your proof did you make a deed for this land?

A. How long after did I make the deed?

Q. Yes.

(Testimony of Charles E. Loney.)

A. I don't know—five or six months anyway—I couldn't say; somewhere along there.

Q. Now, do you remember the circumstances of making the deed? A. Yes, sir.

Q. Who presented the deed to you?

A. I couldn't say whether Steffey gave me that deed or whether he [2445—2115] sent it up to Judd for a certainty, but it seems to me he gave me that deed and I went to Judd's and signed the deed.

Q. Was anything said about the price of the land at that time? A. No, sir, there was not.

Q. And you were acting, when you signed the deed, under your original arrangement with Mr. Steffey, were you? A. Yes, sir; I just signed the deed.

Q. Did he give you any money at the time?

A. No, he didn't give me any money at the time.

Q. Had he given you any prior to that time other than this expense money you have referred to?

A. Yes, he gave me some before.

Q. How much? A. I think he gave me \$75.00.

Q. When was that?

A. That was after I had proved up on the claim at Lewiston.

Q. After you proved up or after you made your original filing?

A. No; after I proved up on the claim.

Q. Was this during that three weeks before you made the deed?

A. I said five or six months; I wouldn't be certain which it was.

Q. I will tell you. You made your final proof on

(Testimony of Charles E. Loney.)

the 19th of June, and you made this deed on the 11th of July; it was three weeks. A. Three weeks?

Q. Yes. Did he give you any money during that three weeks, or did he give it to you prior to that or afterwards?

A. I think he gave me some before that and gave me the balance afterwards.

Q. How much was the balance that you got, the last payment you received?

A. I think the last payment was \$50.00; I wouldn't be positive. [2446—2116]

Q. Was anything said when he gave you the last \$50.00 as to whether or not that squared you?

A. No, sir; there was nothing said.

Q. You were satisfied, were you?

A. I supposed it was all I was to get.

Q. When you signed the deed there was nothing said about the price of the land, was there?

A. No, sir; there was nothing said.

Q. Was anything said about the price of the land between the first talk you had with Steffey and the time he gave you that \$50.00 you have referred to?

A. There was not.

Q. Do you remember making an affidavit after you signed this deed for someone? A. Yes, sir.

Q. How long after you signed the deed, to your best recollection?

A. That must have been quite a little while; I know it was in the winter anyway.

Q. Who brought you the affidavit?

A. I think that Colonel Todd. I was a little mis-

(Testimony of Charles E. Loney.)

taken in that affidavit myself; that was another deal.

Q. When did you get straightened up on that? Who have you been talking to about it?

A. I got straightened up myself. I knew that Todd was there, and I figured out that this other was another deal.

Q. What was the other deal?

A. I don't know what it was at all.

Q. Who was it you thought brought it to you?

A. Steffey was the man that was there, and I was thinking it was the same affidavit, but I know since that it wasn't. I know Todd [2447—2117] stayed overnight.

Q. Which one was it that you signed in the field where you were threshing?

A. That was not Todd's affidavit.

Q. Whose affidavit was it? A. No, sir.

Q. Was it relative to this claim?

A. No, sir, it was not; that was a different lay-out. I have got those two affidavits mixed up.

Q. Now, when you went down to make your proof who paid your expenses from your home down to Lewiston on that occasion?

A. That is the time he gave me the \$10.00—Steffey. No—hold on a minute; I am mistaken there. I paid my own expenses going down, I think. It was when I went down to file on this, was when he give me the \$10.00.

Q. When you went down there wasn't your expenses to be taken out of the difference between what you paid for this final proof and the \$450.00 he

(Testimony of Charles E. Loney.)

gave you that day?

A. I don't know but what that was it; I disremember exactly myself.

Q. Now, didn't he give you the balance of the \$200.00 the day you signed the deed?

A. I wouldn't be positive whether he gave me the balance then or a short time afterwards; it was either then or a short time afterwards.

Q. I find a check here, dated July 13th, 1906, payable to the order of Charles E. Loney, for \$5.00, signed H. J. Steffey. I will ask you if Steffey gave you that check, and whether or not you know what that \$5.00 was for.

A. That must have been my expenses down to Lewiston.

Mr. GORDON.—I offer that check in evidence.

Said check was thereupon marked by the stenographer as Exhibit 101. [2448—2118]

Q. Now, did you know at any time whether or not Mr. Steffey and Mr. Dwyer were in partnership in the land business?

A. No, sir, I didn't know; I made no inquiries whatever about it, whether they were in partnership or not.

Q. Did you know that they were operating together?

A. I didn't know what they were doing together as far as that is concerned myself; I couldn't say.

Q. Did you know that he and Dwyer were working together in the timber?

A. No, sir, I didn't know whether they were work-

(Testimony of Charles E. Loney.)

ing together in the timber or not.

Q. Didn't you tell me this morning that you knew that he and Dwyer were in the timber business together, but you didn't know exactly what the relations between them were?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. That he and Dwyer were in the timber?

Q. Timber business together, but you didn't know exactly what their relations were?

A. I didn't know; I had heard them say they was, but that was all I knew. I didn't know positive myself.

Q. I will ask you whether or not this whole transaction turned out exactly as you understood it would from the time you had your first talk with Steffey?

A. It turned out just about as I expected it would.

Q. You carried out your understanding and Steffey carried out his part of it? A. Yes, sir.

Mr. TANNAHILL.—We object to that as leading and suggestive, and on the further ground that the witness has stated affirmatively that there was no understanding. [2449—2119]

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Charles E. Loney, dated April 3, 1906, the nonmineral affidavit of Charles E. Loney, of the same date, the testimony of Charles E. Loney given on final proof, dated June 19th, 1906, and the cross-examination of Charles E. Loney given at the same date, all of which papers have been identified by the witness, and the testi-

(Testimony of Charles E. Loney.)

mony of the witnesses given at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 19, 1906, the notice for publication, dated April 3d, 1906, certified copy of the patent issued to Charles E. Loney, dated September 11, 1907, all relating to the entry of lot 4 and the southwest quarter of the northwest quarter and the north half of the southwest quarter, section 4, township 36 north, range 5 east, Boise meridian. Also certified copy of a deed made and executed by and between Charles E. Loney and Mary A. Loney, his wife, dated July 11, 1906, conveying to George H. Kester and William F. Kettenbach, in consideration of \$1,000.00, lot 4 and the southwest quarter of the northwest quarter and the north half of the southwest quarter of section 4, township 36 north, range 5 east, Boise meridian, properly executed and acknowledged before Fred H. Judd, Justice of the Peace for Nez Perce County, July 11, 1906, and filed for record in the office of the Recorder of Nez Perce County, at the request of the Lewiston National Bank, July 28, 1906.

Said documents were thereupon marked by the Reporter as Exhibits 102, 102A, 102B, 102C, 102D, 102E, 102F, 102G, 102H, 102I, 102J, 102K, 102L, 102M, 102N, 102-O, and 102P.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents offered, but object to each thereof in so far as they relate to bills No. 388 and 406, upon the ground that the entry of the witness is not involved in these two

(Testimony of Charles E. Loney.)

particular actions, and is irrelevant and immaterial. And the defendants severally object [2450—2120] to the admission of any of the final proof papers in evidence in support of either of the actions, upon the ground that they are irrelevant and immaterial.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Loney, I believe you stated that Mr. Myers first told you that Steffey was locating people on timber claims? A. Yes, sir.

Q. You understood that he was locating them for a location fee, did you not?

A. Yes, sir; I understood he was locating them for a location fee.

Q. And Mr. Myers told you that he had arranged to borrow the money from Steffey to pay for his land, did he?

A. I wouldn't say whether he told me that or not positive.

Q. But you told Mr. Steffey that you would like to take a claim, and if he found anything worth taking to let you know? A. Yes, sir.

Q. And he afterwards told you that he had a timber claim for you, did he? A. Yes, sir.

Q. And you said something to him about borrowing the money from him to pay the expenses and the final proof?

A. I didn't say anything to him about it, but—

Mr. TANNAHILL.—Will you read the question, Mr. McClain?

The last question was thereupon read by the Reporter.

(Testimony of Charles E. Loney.)

A. No, sir, I didn't say anything to him about borrowing it of him.

Q. You said something to him about getting the money from him, did you? [2451—2121]

A. I told him I didn't have the money myself.

Q. You told him you didn't have the money?

A. Yes, sir.

Q. Now, you made your final proof and got the money from him and used part of that?

A. Yes, sir.

Q. For the payment of the land office fees?

A. Yes, sir.

Q. And you used \$150.00 of your own money?

A. Yes, sir; I had \$150.00 of my own money with me.

Q. And you proved up on the land?

A. Yes, sir.

Q. And after you proved up on it you made a sale of it to Kester and Kettenbach?

A. Yes, sir; they was the ones the deed was made to.

Q. Now, as I understood you to say, you had no agreement with Mr. Steffey to sell him the land, or anyone else, before you made proof?

A. No, sir, I did not.

Q. You understood that Mr. Steffey would help you to find a buyer for the land after you made final proof? A. Yes, sir.

Q. That was your understanding?

A. My understanding was that he was to find a

(Testimony of Charles E. Loney.)

buyer; I didn't know who the buyer was, or anything about it.

Q. And if you had had an opportunity to sell that land for \$500.00 or any sum more than Mr. Steffey or his buyer was willing to pay for it, you would have felt at liberty to sell it and pay Mr. Steffey back the money you had borrowed?

A. Yes, sir; I was under no obligation to him to let him have that land. [2452—2122]

Q. And you didn't understand that you was entering into any agreement to sell the land before you made final proof?

A. No; there was no agreement whatever.

Q. Then the affidavit that you made at the time you filed your sworn statement, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it? A. Yes, sir.

Q. You was qualified to make entry under the timber and stone laws of the United States?

A. I was.

Q. I will show you an affidavit purporting to have been signed by you on the 21st day of December,

(Testimony of Charles E. Loney.)

1906, before William J. Todd, notary public, and ask you if that is the affidavit that was executed by you at that time?

A. Yes, sir; I signed that affidavit.

Q. The statements contained in that affidavit are true, are they? A. Yes, sir.

Mr. TANNAHILL.—We offer the affidavit in evidence, and ask that it be marked as a proper exhibit.

Said affidavit was thereupon marked by the Reporter as Defendants' Ex. "A-2."

Q. I will ask you, Mr. Loney, if you had a conversation with Mr. Steffey regarding your claim since this matter has been investigated, or since this suit was instituted by the Government? [2453—

2123] A. If I had any conversation with him?

Q. Yes.

A. No; I have had no conversation with him.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all, Mr. Loney.

At this time an adjournment was taken until tomorrow morning at 10 o'clock. [2454—2124]

At 10 o'clock A. M., Tuesday, September 20, 1910, the hearing was resumed, and the following proceedings were had, to wit:

**[Testimony of Henry M. O'Bleness, for
Complainant.]**

HENRY M. O'BLENESSE, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

(Testimony of Henry M. O'Brien.)

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Henry M. O'Brien?

A. Henry M. O'Brien.

Q. What is your occupation, Mr. O'Brien?

A. I am a special agent of the Department of Justice.

Q. Were you such in August last? A. Yes, sir.

Q. In August, 1909?

A. I have held my present position since the 1st of June, 1909, continuously.

Q. Do you remember of being in the directors' room at the Lewiston National Bank August 19th, 1909, when a conversation took place between Mr. Claud Gatch, the bank examiner, and Mr. William Dwyer and myself?

A. Well, as to the date, of course, I don't attempt to remember that, except that a memorandum was made of the conversation, and this memorandum, which I have here, is dated August 18th. I remember a conversation there which I presume is the one you refer to.

Q. Will you state what that conversation was, as near as you can remember?

A. Mr. Dwyer was asked by you as to the timber operations carried on by himself for Kester and Kettenbach, and the amount of [2455—2125] timber that had been bought, and so forth, and stated that he had disbursed by check approximately \$100,000.00; as I recall his statement the checks were signed by him and were to be charged and were

(Testimony of Henry M. O'Bleness.)

charged, as stated by him, to the timber account of Kester and Kettenbach at the Lewiston National Bank of Lewiston, Idaho.

Q. Did he state whether he signed those checks with his own name or not?

A. That was my understanding, that he signed the checks with his own name.

Q. Were there any marks put upon them, according to that statement, to identify those checks?

A. There was a K. with a circle around it, referred to, I believe, as circle K. checks.

Q. Do you remember whether or not he said at that time that he had a bank account in his own name at the Lewiston National Bank?

A. My recollection is that Mr. Dwyer stated that he had not an account with the Lewiston National Bank.

Mr. GORDON.—That's all.

Cross-examination.

(By Mr. TANNAHILL.)

Q. How long was this conversation in taking place? How long were you in conversation there?

A. Mr. Tannahill, I couldn't say exactly; it was something less than half an hour, I should say, as I recall it.

Q. There was a great many things said in that conversation that you do not remember, was there not?

A. Really about all I do remember, and the only thing that was under discussion there that impressed

(Testimony of Henry M. O'Bleness.)

itself on my mind at all was with reference to the timber transactions. As I recall, there was no [2456—2126] other conversation had except with regard to the matter that Mr. Gordon asked Mr. Dwyer to come there to relate to him.

Q. Do you remember Mr. Dwyer saying that there had been purchases made by Kester and Kettenbach and by himself for Kester and Kettenbach in the Clearwater country of approximately \$120,000.00?

A. Mr. Tannahill, as a matter of fact, as has already been stated, I believe that a memorandum was made of that conversation relating to the point that Mr. Gordon was inquiring of Mr. Dwyer about, and—

Q. I am just asking you what your independent recollection is.

A. I don't recall that statement which you suggest.

Q. That statement might have been made?

A. Possibly; I wouldn't attempt to state that it hadn't been or that it had.

Q. Do you also remember that Mr. Dwyer said that he was making those purchases and paid for them with those circle K. checks for Kester and Kettenbach?

A. It is my recollection that he went into that in some detail, as to how he had paid for these timber claims by check. The thing that impressed itself on my mind more than anything else was his statement that he had no account in the bank, that these checks were always taken care of and charged to the

(Testimony of Henry M. O'Bleness.)

Kester and Kettenbach account.

Q. And that the purchases were made for Kester and Kettenbach?

A. I don't know as to that phase of it, whether they were actually made for them; that was the statement—the Kester and Kettenbach timber account.

Q. You understood that he made the purchases for Kester and Kettenbach from what he said, did you not?

A. I don't know that I understood that particularly. [2457—2127]

Q. You didn't understand that he made the purchases for himself, did you?

A. I couldn't say that either. My understanding was that Mr. Dwyer was the outside man in this timber operation, that is, the man in the field handling it; I don't know that he made any statement as to whether or not he had any interest in it.

Q. Will you swear that Mr. Dwyer did not say that he was making the purchases for Kester and Kettenbach? A. No, I wouldn't say that.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all, Mr. O'Bleness. [2458—2128]

[**Testimony of John E. Chapman, for Complainant.**]

JOHN C. CHAPMAN, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

(Testimony of John E. Chapman.)

Direct Examination.

(By Mr. GORDON.)

Q. Your name is John E. Chapman? A. It is.

Q. Where do you reside at present, Mr. Chapman?

A. Tacoma, Washington.

Q. How long have you resided in Tacoma?

A. About three months.

Q. Where did you reside prior to that time?

A. Lewiston.

Q. Idaho? A. Lewiston, Idaho.

Q. How long had you resided at Lewiston?

A. Thirty years.

Q. What was your last employment at Lewiston?

A. Assistant cashier of the Lewiston National Bank.

Q. When were you made assistant cashier of the Lewiston National Bank?

A. I think it was in 1906.

Q. Were you employed in the bank prior to that time? A. I was.

Q. In what capacity?

A. Teller and bookkeeper—oh, I beg your pardon; I said I was made assistant cashier in 1906. I want to correct that; I was not.

Q. Well, correct it then.

A. It was in 1906 that I was made teller; prior to that I was bookkeeper. [2459—2129]

Q. When were you made assistant cashier?

A. That was I think the latter part of 1908.

Q. When were you first employed in the Lewiston National Bank? A. About 1903.

(Testimony of John E. Chapman.)

Q. And you were employed continuously in the Lewiston National Bank until what date?

A. Until about the middle of May, 1909.

Q. And during the period that you were in the bank, until the middle of July, 1907, who were the president and the cashier respectively?

A. Mr. William F. Kettenbach, president, and Mr. George H. Kester, cashier.

Q. Who succeeded Mr. William F. Kettenbach as president? A. Mr. Frank W. Kettenbach.

Q. And that was about July, 1907?

A. During July, 1907.

Q. Was Mr. Clarence W. Robnett employed in some capacity in the Lewiston National Bank during the period that you were so employed in that institution?

A. He was, with the exception of about one month, I think.

Q. When was that?

A. I think that was from August to—or I think it was during or about the month of September, 1907.

Q. I will ask you whether or not you knew that Kester, Kettenbach and Dwyer were engaged in the timber land business? A. I did.

Q. Now, do you remember when they began operations in that business? A. No, I do not.

Q. Well, how far back can you remember them being engaged in the timber operations? [2460—2130]

A. Well, I think it was before I came into the

(Testimony of John E. Chapman.)

bank, but I haven't any definite knowledge regarding it.

Q. Do you know whether or not Mr. Clarence W. Robnett was engaged in that business with them?

A. Well, Mr. Robnett was engaged in the business, but he was never supposed to be—he was never said to have an interest in the same timber.

Q. Now, who said that?

A. Well, no one said it, but I say he never was said to have an interest in the same timber.

Q. What were their relations? Did they act in conjunction in any way in their timber business?

A. Well, their dealings so far as I know were separate except in so far as Robnett was interested in knowing about everything that was going on.

Q. Now, tell what you mean by that.

A. I mean that he made it a point to inform himself as much as possible about every timber transaction that occurred around the bank.

Mr. TANNAHILL.—We move to strike out the answer of the witness, upon the ground that it is a conclusion and not a statement of fact.

Mr. GORDON.—Q. Do you know whether or not Robnett advised Kester and Kettenbach of his timber transactions?

Mr. TANNAHILL.—We object to that as calling for a conclusion of the witness and not the statement of a fact.

Mr. GORDON.—Answer the question.

WITNESS.—State that again, please.

(Testimony of John E. Chapman.)

The last question was thereupon repeated by the Reporter.

A. I don't know whether he advised them fully or not, but I know that they consulted each other, that is, at least he told them of his transactions.
[2461—2131]

Q. Do you know how the descriptions of the timber claims that Kester, Kettenbach and Robnett were dealing in were kept? Did they have maps and plats that they kept the territory and the claims that they were interested in on?

A. Yes, they had maps and plats.

Q. State what you know about that.

A. Well, in regard to plats, Kester had his own individual plat book, so far as I know, and Robnett had nothing to do with that, but Robnett kept his own plats, but I think the entire bunch of timber of all parties was put on the same map.

Q. Did you ever see Robnett going over the plat-book with Kester of his timber?

A. Not over Kester's plat-book.

Q. Did you ever see him with Kester discussing matters in Kester's plat-book? A. No; never.

Q. Did you ever see Kester or Kettenbach discussing matters contained on Robnett's plats?

A. I know that they discussed the timber, but I don't remember of their using their plats in the discussion; they knew what timber Robnett had, and the discussion was largely in regard to deals with Robnett that Robnett was endeavoring to put through.

(Testimony of John E. Chapman.)

Q. Did they have a map or plat in evidence on the walls of the bank showing the timber holdings of Kester and Kettenbach. A. Yes.

Q. Do you know what became of that plat?

A. No, I do not.

Q. Did it continue in the same place during the whole period you were in the bank? [2462—2132]

A. No. They didn't have it in the first place—I think they discontinued the use of the plat-book after they got the map.

Q. Do you remember when that map disappeared from the walls?

A. It was during—at the beginning, I think, or during the trials, one of the trials at Moscow.

Q. Was it the trials, or the investigations?

A. Well, I couldn't state, but I think it was the investigation.

Q. Do you know who took the map away?

A. I do not.

Q. Do you know who took it down from the wall?

A. No.

Q. I will ask you whether or not the timber transactions in which these gentlemen were engaged or which they discussed among themselves—I refer to Kester and Kettenbach and Robnett—were done openly or whether they talked of the matter secretly?

A. The discussions?

Q. Yes.

A. Why, they were openly in many cases, and in other cases in the directors' room.

Q. Well, now, will you tell of any instances you

(Testimony of John E. Chapman.)

can remember of these conferences in the directors' room?

A. I couldn't say that any conferences in the directors' room was in regard to the timber, that is, between Kester and Kettenbach and Robnett, because I never knew what went on in the directors' room, but my information regarding the conferences would come when Robnett would make it a point to find out what the conference had been about between Kester and Kettenbach in the directors' room.

Q. Now, how did you learn that?

A. I have heard him ask Will Kettenbach on their reappearing from the directors' room if there was anything doing in the timber line. [2463—2133]

Q. And did Kettenbach reply?

A. And Kettenbach would, as a rule, probably tell him what was going on.

Q. Do you remember of any conferences that were had in the directors' room between Kester, Kettenbach and Robnett? I do not mean the subject discussed, but whether they conferred together in the directors' room.

A. No, I couldn't state that any meeting there was for the purpose of a conference.

Q. Did you ever see Kester and Kettenbach go into the directors' room and then call Robnett in?

A. No, not to call him in, but I will tell you now, like this: The directors' room—the toilet was—in order to get to the toilet in that bank you would have to go through the directors' room, and, of course, a man could go to that toilet through the directors'

(Testimony of John E. Chapman.)

room and have a conversation in the directors' room while he was absent, you know.

Q. Did you ever know of any conferences that took place in Mr. William F. Kettenbach's office between Kester, Kettenbach and Robnett?

A. Not the three of them.

Q. Did you ever know of Robnett being called into a conference in there?

A. Not with the three of them.

Q. Well, with any one of them, then.

A. I have seen him talking to both of them at different times.

Q. Do you know what he was talking about?

A. About the timber.

Q. How many occasions can you remember that you saw Mr. Robnett and either Kester or Kettenbach, or both of them, talking about timber?

A. Well, I guess a dozen.

Q. Did you ever hear of a series of checks that were spoken of about the bank as circle K. checks?
[2464—2134] A. Yes.

Q. Well, now, state what they were, as far as you know.

A. Why, those were checks that were drawn by Mr. William Dwyer in payment for timber and expenses in connection with the timber business.

Q. Do you know what the aggregate amount of those checks was, as you can remember?

A. Well, I would say it was at least \$50,000.00.

Q. Do you know whether any of these checks were used for advancing entrymen money for their ap-

(Testimony of John E. Chapman.)

plications and for final proof?

A. I think they were.

Q. And how were those checks signed?

A. They were signed William Dwyer.

Q. Was there any mark of identification put on those checks?

A. There was a circle K. put on them as a rule.

Q. Now, to whose account were those checks charged?

A. As a rule they were carried in the cash items and taken up by Kester and Kettenbach.

Q. Do you remember how long they would be carried as cash items at different periods?

A. Sometimes for two or three weeks.

Q. And what amount would they aggregate before they were taken up, as a general thing?

A. Well, they wouldn't wait for any particular amount to accumulate; it was at their convenience, and sometimes it would aggregate several thousand dollars.

Q. Several thousand dollars?

A. Yes, sir, that is, among their other—along with their other cash items.

Q. And I understood you to say that when a certain amount of those checks had accumulated either Kester or Kettenbach would take them up, and what would they put in place of them? [2465—2135]

A. They would put their own check in place of them.

Q. A joint check, or how would that be attended to?

(Testimony of John E. Chapman.)

A. Well, there was a time there when they would take them up by simply dividing the amount, one-half of which was charged to Kester and one-half to Kettenbach, and at another period they had a Kester and Kettenbach timber account, I think, that they went into.

Q. And after that account was started were they charged to that account? A. Yes.

Q. Now, were these checks that you have referred to being used when you first came into the bank?

A. They were not; there were no circle K. checks when I first came into the bank.

Q. How long after you became connected with the bank did they make their appearance?

A. Well, I don't think they commenced to put on the circle K. until after I became teller.

Q. When was that?

A. In 1906, or—yes, 1906.

Q. During your period in the bank do you know whether any of those checks were ever charged to the account of Kittie E. Dwyer? A. They were.

Q. Do you know whether or not deposits were made to the account of Kittie E. Dwyer either by Mr. Kester or Mr. Kettenbach? A. They was.

Q. And do you know what those deposits were made to her account for, what the occasion of those deposits being made to her account were for?

A. To cover these checks.

Q. Now, explain what you mean by that.

A. Well, to cover the checks that were drawn that was used in the [2466—2136] timber business.

(Testimony of John E. Chapman.)

Q. That were signed by William Dwyer?

A. Yes, signed by William Dwyer; there were no checks that went into the account that were not signed by William Dwyer or his wife.

Q. They were checks that they had left the circle K. off of that went into Kittie E. Dwyer's account, is that correct? A. Yes, sir.

Q. Well, state what was done to show that they oughtn't to have gone into Kittie E. Dwyer's account.

A. Well, a deposit would be made for the account of the checks that shouldn't have gone in there, and Kester and Kettenbach would take up these checks; they would be placed back in the cash and be taken up later by Kester and Kettenbach.

Q. Do you know of any other instances that either Kester or Kettenbach credited Kittie E. Dwyer's account at the bank?

A. I think on one or two occasions, where there was a direct purchase of timber.

Q. In whose name?

A. Well, as far as that was—I never—Mr. Gordon, 'I never saw the papers, so I couldn't say—whether they were purchased in Mr. Dwyer's name or Kester and Kettenbach's.

Q. How did you learn about it?

A. Well, just from the fact of the check being drawn.

Q. Did you see the deposit slips? A. Yes, sir.

Q. Who would make them out?

A. Kester and Kettenbach.

(Testimony of John E. Chapman.)

Q. Kester and Kettenbach?

A. Well, it was supposed to be, that is—

Q. Well, who would attend to it? Who did the business with you? [2467—2137]

A. Well, Mr. Kester was the one—well, he wouldn't necessarily have to do the business with me; he could go there and do it in my cage, you see, without consulting me.

Q. Did you see the deposit slips? A. Yes, sir.

Q. Did you see any of those deposit slips?

A. Yes, sir.

Q. How many of them do you remember having seen? A. I think there were one or two.

Q. Did you know at the time what he was making deposits to Kittie E. Dwyer's account for?

A. Well, I was under the impression at that time that it was for the purchase of timber, or—I will change that—for timber that had been—

Mr. TANNAHILL.—We move to strike out the answer of the witness on the ground that his impression is not competent evidence, and is so indefinite and uncertain that it cannot be considered in determining the issues in this case.

Mr. GORDON.—Q. Do you know whether or not the land in which Robnett was operating was marked off on the plat that you referred to as having been in the office there, belonging to Kester and Kettenbach? A. Yes.

Q. Was it or was it not? A. It was, yes.

Q. Do you know who marked it on there?

A. No, I am not sure, but I think Robnett kept it

(Testimony of John E. Chapman.)

up to date.

Q. Did Robnett take charge of the whole plat?

A. Oh, no.

Q. He marked his on the plat that they used?
[2468—2138] A. I think so.

Q. Do you remember whether or not it was in a different colored marking?

A. I think different colors were used to represent timber held by different parties.

Q. Did you ever have any instructions from either Mr. Kester or Mr. Kettenbach about the account of Harvey J. Steffey?

A. Yes; to—in regard to permitting an overdraft.

Q. Who gave you that instruction?

A. Mr. Kester.

Q. What did he say about it?

A. Just authorized the overdraft.

Q. Was it a general authorization or just for one occasion?

A. It was for—there was a general authorization for a small overdraft, but when the amount—

Q. That was relative to Steffey's account?

A. Yes; but for any large amounts coming in it was always put up to the cashier for his O. K.

Q. Do you remember of having put it up to Mr. Kester for his O. K.? A. Yes.

Q. On how many occasions?

A. Two or three occasions.

Q. Do you remember what those amounts were, approximately?

A. Well, I think there was a time when the over-

(Testimony of John E. Chapman.)

draft ran up to between two and three thousand dollars.

Q. Was that the occasion that you asked if you should honor the checks any longer? A. Yes.

Mr. GORDON.—That is all. [2469—2139]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Do you remember of Steffey giving his notes to cover this overdraft, Mr. Chapman?

A. He gave notes, but I don't know whether it covered all his overdraft.

Q. He gave notes at different times, did he not?

A. At different times.

Q. Didn't he give notes at one time to cover an overdraft which he expected to draw and which he hadn't yet drawn?

A. I don't remember that occasion.

Q. He might have given it?

A. He might have.

Q. And you do remember of his giving notes to cover an overdraft at different times, do you not?

A. Yes, sir.

Q. Mr. Steffey had considerable property there at one time, did he not, that is, several timber claims, or two or three timber claims?

A. I think he did; I have no definite knowledge of what he had.

Q. That was the impression that you gathered from the dealings of the bank with him?

A. Yes.

Q. And from the property that he had the officers

(Testimony of John E. Chapman.)

of the bank figured that he was good for a limited overdraft, did they not?

A. Well, I couldn't say what the officers figured in regard to his credit.

Q. You considered that he was, did you not?

A. I had no right for any consideration of the subject; I was authorized to—

Q. What was your opinion about it?

A. — to take care of his account. Well, I thought that he had [2470—2140] some timber.

Q. And you thought that he was good for a limited overdraft, did you not?

A. Well, I thought so, from the reason that he was granted an overdraft.

Q. Don't you know that Mr. Steffey sold some individual claims for \$5,500.00, of his own holdings?

A. I don't remember the transaction.

Q. Were those deposits made in the bank during the time you was there?

A. Well, Mr. Steffey, I think at different times had a number of good deposits there.

Q. Mr. Steffey was considered a good customer of the bank, was he not? A. Yes.

Q. And the bank never lost any money on him that you know of? A. Not that I know of.

Q. And those overdrafts of Mr. Steffey's were handled the same as overdrafts of anyone else, any other customer of the bank, were they not?

A. So far as I know.

Q. You consulted Mr. Kester about the large overdrafts just the same as you would consult him

(Testimony of John E. Chapman.)

about— A. About anybody else's.

Q. — anybody else's overdrafts? A. Yes, sir.

Q. Now, you say you had instructions from Mr. Kester to permit an overdraft of Mr. Steffey's. Do you remember when you were so instructed by Mr. Kester? A. No, I do not.

Q. What is your best recollection as to the date?
[2471—2141]

A. I couldn't give you the date at all in there; I don't remember when the transactions were.

Q. You had a good many transactions there and a good deal of work, and it is pretty hard for you to remember the details of any of these transactions, is it not?

A. There was so many of them that unless some special thing would come up to impress it on one's mind you couldn't remember it.

Q. Then you don't recall anything unusual regarding Mr. Kester telling you to permit Mr. Steffey to overdraw? A. No.

Q. Now, Mr. Chapman, what class of work did you do there? A. All classes.

Q. All classes of work? A. Yes, sir.

Q. You was quite busy, was you not?

A. All the time, very busy.

Q. And you had some business matters of your own that you handled too, did you not?

A. I did.

Q. And you had but little time to think about what anyone else was doing outside of the bank business, had you?

(Testimony of John E. Chapman.)

A. Very little time to think about it.

Q. And you wasn't particularly interested in what anyone else was doing outside of the bank transactions, was you? A. I was not.

Q. And you do not remember of any particular conversation that you heard in the bank relative to timber transactions, do you?

A. No, except as I stated before, when Robnett would seek out Mr. Kettenbach or Mr. Kester and ask them what was doing in the timber business, if there was anything— [2472—2142]

Q. If there was anything doing in the timber business? A. Yes.

Q. Do you remember of any specific time or occasion that you heard that statement?

A. Well, there was a number of occasions; there were two or three, when Thomas Brewer and Robnett were figuring on a deal together, and I heard Robnett talk with them about that.

Q. Well, now, what did Brewer have to do with it?

A. Robnett and Brewer each controlled a bunch of timber claims, and they were endeavoring to put them all together and lump them off at the same time.

Q. Now, Kester and Kettenbach were not interested in that, were they? A. I don't think so.

Q. Had you any timber claims that you were putting in with that bunch? A. I did not.

Q. You was not interested in any that you was putting in with the Brewer and Robnett claims?

A. No.

(Testimony of John E. Chapman.)

Q. Now, do you remember of any other conversation that you heard, any other specific instance?

A. No; I don't recall any specific instance right now.

Q. Now, you spoke of Mr. Kester or Mr. Kettenbach—I forget just what your testimony was on that—but anyway there was some deposits made in the account of Kittie E. Dwyer. A. Yes.

Q. I will ask you if you don't remember that Kester and Kettenbach both, from time to time, deposited the salary of Mr. Dwyer, his compensation that he received for work that he was doing for them, in the account of Kittie E. Dwyer?

A. I don't remember that it was his salary.
[2473—2143]

Q. You don't remember that it was for salary?

A. No.

Q. It might have been for salary in so far as you remember at this time?

A. Well, I think they did deposit his salary that way; I think that is the way he was paid, by depositing his salary in his account.

Q. Don't you remember, Mr. Chapman, that on two or three different occasions there was a check come in that Mr. Dwyer had paid for timber for Kester and Kettenbach, and he hadn't put the circle K. on, and that check was charged up to the account of Kittie E. Dwyer, and then afterwards there was a deposit made in the account of Kittie E. Dwyer by Kester and Kettenbach for the purpose of correcting that, and this check was charged up to the account of Kes-

(Testimony of John E. Chapman.)

ter and Kettenbach?

A. Well, I stated that deposits were made for checks that had been drawn and a number of times when checks were drawn that way that didn't have the circle K. on they went into Kittie E. Dwyer's account.

Q. And then these checks would be taken out of Kittie E. Dwyer's account and charged to the account of Kester and Kettenbach, and a deposit made in the account of Kittie E. Dwyer to cover that?

A. To cover the checks.

Q. That is as you understand it?

A. That is the way those transactions was; that is the way the checks were taken care of; they were charged to their account.

Q. I didn't understand what your testimony was on that particular point. Now, do you remember anything about the extent of the deposits in Kittie E. Dwyer's account of Mr. Dwyer's salary?

A. No, I don't remember about the salary deposits; I don't know what his salary was.

Q. Well, there was a great many deposits that was made in Kittie E. Dwyer's account that, according to your recollection, was for Mr. Dwyer's [2474—2144] salary, was there not?

A. I don't remember them as being deposited to the salary, because I don't know how that part of the business was conducted.

Q. But you do remember that Mr. Dwyer's salary was deposited in the account of Kittie E. Dwyer?

A. I think that is the way they would do it, because

(Testimony of John E. Chapman.)

that is the way we all got our salaries in the bank.

Q. Now, you say that when those circle K checks first came in Kester and Kettenbach would divide them up and one would give a check for half of it and the other for half, is that right? A. Yes.

Q. And then, after the Kester and Kettenbach account was started, they would be taken up and the check of the Kester and Kettenbach timber account was deposited in their place, or they were charged up to the Kester and Kettenbach timber account, is that right? A. yes.

Q. Now, in so far as you know, these checks were all taken care of and the bank suffered no loss by reason of them? A. So far as I know.

Q. So far as you know they were all taken care of by Kester and Kettenbach? A. So far as I know.

Q. And according to your understanding, Mr. Dwyer was making purchases of timber for Kester and Kettenbach? A. Yes.

Q. You had no knowledge of any interest that Mr. Dwyer had in any timber?

A. I have no absolute knowledge, but it was common talk around the bank that Mr. Dwyer had a third interest in the timber.

Q. But you don't remember of any particular conversation about [2475—2145] that, do you?

A. I never saw any papers or—(laughing).

Q. You never heard Mr. Dwyer say so?

A. No, I never did; or Mr. Kettenbach say so.

Q. Or you never heard Mr. Kester say so?

A. No.

(Testimony of John E. Chapman.)

Q. That was simply an impression you had gotten around the bank there, that was simply an impression you had gotten around the bank?

A. Yes; it was commonly understood among the employees of the bank.

Q. I believe you said that Kester and Kettenbach would take these checks up at their convenience, but they didn't wait for any particular amount to accumulate?

A. Yes, that is, any particular amount.

Q. And they would take them up at the time they took care of other cash items in the bank?

A. Yes.

Q. Now, you say that you think some of these checks were for advancing money to entrymen for final proof. Do you remember any particular entryman who was advanced money in that way?

A. No; except, I think, in the case of Albert Kester; he was permitted to draw his check for the amount of his final proof.

Q. Who was permitted to? A. Albert was.

Q. Albert Kester was? That wasn't Mr. Dwyer's check, was it? A. No.

Q. I am referring now to them. When you said that you think some of these checks were used for advancing money to entrymen for final proof you didn't refer to the circle K. checks?

A. Oh, I think there were, but I can't recall any particular checks.

Q. You can't recall any particular check or any particular entryman? A. No, sir. [2476—2146]

(Testimony of John E. Chapman.)

Q. That is simply your impression about it?

A. Yes.

Mr. TANNAHILL.—We move to strike out the evidence of the witness relative to money being advanced to any entrymen, for the purpose of making final proof, by reason of the drawing of circle K. checks, upon the ground that it is incompetent, irrelevant and immaterial, and so indefinite and uncertain that it cannot be made the basis of a claim to support plaintiff's case or contention. The defendants also severally move to strike out all of the evidence of the witness relative to his impression or the impression of any employee of the bank that Mr. Dwyer had an interest in any of the timber lands held by Kester and Kettenbach, upon the ground that it is so indefinite and uncertain that it cannot be considered as evidence, and in fact is not evidence of anything.

Q. Now, I understood you to testify that Kettenbach, as a rule, would tell Robnett what was going on, when Robnett would inquire. As I understood you to say, you didn't remember anything that was said further than that Robnett would inquire if there was anything doing in the timber transactions. Now, do you remember anything that Kettenbach told him when he made that inquiry? A. No.

Q. And you don't remember any conversation that you heard in Mr. Kettenbach's private office between Robnett and Kester or Kettenbach? A. No.

Q. Now, you testified concerning a plat that was hanging on the wall, Mr. Chapman. I will ask you if you do not remember that that was a large plat

(Testimony of John E. Chapman.)

upon which the holdings of everybody was marked, and that was not only kept up by Robnett, but was also kept up by Kester and Kettenbach?

A. Oh, yes, it was.

Q. When anyone would purchase a piece of land, even the Clearwater [2477—2147] Timber Company would make purchases, it would appear on the daily abstract that you would get, they would go and mark that up off of the plat to indicate it?

A. I don't think they did that; I don't think the daily abstract was used in connection with it; I never saw it.

Q. But when they had knowledge of any purchases, it was marked off on that plat?

A. Well, I think that there was nothing marked—

Q. That is, in that particular locality, that is, the locality where Kester and Kettenbach's lands were?

A. Well, I won't say what was on the plat; I don't know what they put on the plat; I don't know what the different colors represented, but I think they kept their own individual timber in one color, and the timber they could control, and—I don't know, however, what the plan of the plat was.

Q. Now, what do you mean by the timber they controlled?

A. Well, there were people who were friends whose claims were close to theirs, and I think who located on the timber through them, that they controlled.

Q. Well, now, didn't they also keep an account of all of the timber that was located in the vicinity of their holdings?

(Testimony of John E. Chapman.)

A. They might have done so; I have no doubt they did.

Q. It was not confined to all of the people that Dwyer located? A. I don't know.

Q. And Robnett was not the only one who kept up that plat, was he?

A. No; he wasn't the only one, and I—

Q. Now, Mr. Chapman, don't you remember that that plat was taken out of the bank when Kester and Kettenbach went out of the bank? Don't you remember that it was taken out at that time, in June or July, 1907?

A. I don't remember the date when it was taken out. [2478—2148]

Q. It might have been taken out at that time?

A. I thought it was taken out earlier.

Q. I will ask you if you have ever been in Mr. Gray's room when Mr. Gray was examining the books of the bank. A. In his room?

Q. Yes. A. No.

Q. You haven't been in there?

Mr. GORDON.—Ask him what he means by his room.

Mr. TANNAHILL.—On the third floor of the Lewiston National Bank building.

A. No, I have never been up there.

Q. You don't know, then, whether that map is hanging up in Mr. Gray's room or not?

A. No, I do not.

Q. Now, think and see if you can't remember more definitely when the plat was taken out of the Lewis-

(Testimony of John E. Chapman.)

ton National Bank building.

A. No, I can't remember any definite date; I couldn't place the date.

Q. Now, Robnett had plats of his own timber, had he not? A. I think he had.

Q. And I believe you testified that Robnett was not interested in any of the timber of Kester and Kettenbach to your knowledge, that you didn't so understand? A. Not to my knowledge.

Q. That Robnett had his timber separate and Kester and Kettenbach had their timber separate?

A. Yes, sir.

Q. Now, you say that you heard a conversation between Kettenbach and Robnett several different times in Kettenbach's private office. I will ask you if you remember the circumstances of Mr. Robnett going to [2479—2149] W. F. Kettenbach and borrowing some money, getting him to make some loans to pay the proving up fees of some entrymen which Curtis Thatcher was going to loan to Robnett, but at the last moment failed to make the loans?

Mr. GORDON.—I object to that on the ground that it is not proper cross-examination, the matter not having been gone into in the examination in chief.

A. I don't remember any loans like that, that is, that were taken up by Mr. Kettenbach after Mr. Thatcher had failed to make them.

Mr. TANNAHILL.—Q. Do you remember of Mr. Thatcher making some loans to Robnett for entrymen that had been located by Robnett?

(Testimony of John E. Chapman.)

A. I don't think he ever made any loans to Robnett.

Q. Do you remember of his making some to the entrymen?

A. I remember of his making a number of loans to different people, but I don't remember who the people were.

Q. And you know nothing about a conversation between Robnett and W. F. Kettenbach where Robnett went to him to get him to make some loans to some entrymen that Curtis Thatcher had filed to make the loans?

A. No, I don't know anything about that.

Q. Now, you are not on very friendly terms with W. F. Kettenbach and George H. Kester and Frank Kettenbach, are you, Mr. Chapman?

A. Frank Kettenbach in particular, but there is no reason on my part for unfriendliness with Mr. Will Kettenbach and Mr. Kester. They have appeared to shun me.

Q. How is that?

A. I say they have appeared to shun me.

Q. You are not on friendly terms with the officers of the Lewiston National Bank, are you?

A. Why, I am, so far as I know. I don't know of any unfriendliness [2480—2150] on their part.

Q. There is a civil suit now pending against you by the Idaho Trust Company which grew out of some differences or difficulties between you and the Lewiston National Bank, which is also a defendant in this case, in which you are testifying, is there not?

(Testimony of John E. Chapman.)

A. There is such a suit.

Q. There is such a suit pending? A. Yes, sir.

Q. And by reason of that suit pending against you to recover several thousand dollars of money you are not on especially friendly terms with the officers of that institution or with the Idaho Trust Company, which has taken an assignment of that claim, are you?

A. Well, that doesn't affect our friendship; our friendship so far as the officers are concerned isn't affected by anything in the corporation.

Q. Your principal ill-feeling is against Frank W. Kettenbach, who is one of the defendants here, is it not?

A. Well, I don't like to testify as to my feelings toward anybody.

Q. I am just simply wanting to make the record, Mr. Chapman. I have no personal feeling in it myself, but I am just simply wanting to show your relations, so that it will appear as a matter of record, for the purpose of affecting the case, whether it be for you or against you; I have no particular feeling myself. But you have considerable ill-feeling for Frank, haven't you? A. I have.

Q. And that ill-feeling not only grows out of this civil suit that is now pending, in which Frank Kettenbach is the principal plaintiff, or conducting the suit, but it also grows out of the criminal action which was instituted against you, and in which you were charged with [2481—2151] embezzling funds of the Lewiston National Bank and falsification of

(Testimony of John E. Chapman.)

the records, the complaint having been sworn to by Frank W. Kettenbach.

A. It grows out of Frank Kettenbach's attitude in the entire matter.

Q. And also from the fact that this charge was also investigated by a grand jury in which Frank W. Kettenbach took an interest adverse to you, is that right?

A. Yes. The former question I think answers the whole thing.

Q. You was also discharged from your position in the Lewiston National Bank while Frank Kettenbach was president, was you not?

A. I was not; I wasn't discharged, I quit.

Q. You was asked to resign? A. I was not.

Q. You resigned after there had been some trouble and after the charge had been made that you had—

A. No; before.

Q. — embezzled money?

A. No; before. I didn't tender my resignation; I just left the bank.

Q. You left the bank about the time that this investigation came up, did you not?

A. It was after the investigation.

Q. After the investigation? A. Yes, sir.

Q. And it was after Robnett was charged with embezzling a large sum of money from the bank, was it not?

A. It was before anything was made public.

Q. Before anything was made public?

A. Yes, sir. [2482—2152]

Q. But the charges had in effect been made by Mr.

(Testimony of John E. Chapman.)

Frank W. Kettenbach and the directors of the bank, had they not?

A. I don't know whether the directors had made any charges or not.

Q. Well, I don't mean that any formal charges had been filed, but the officers of the bank had accused Robnett of embezzling a large sum of money from the bank, and the investigation of the books had showed a shortage of something like \$137,000.00, is that right?

A. Well, I don't know what went on in the directors' room at all among the directors.

Q. Well, under what circumstances did you resign?

A. Well, when Mr. Kettenbach came to me one day and just said that he thought I had guilty knowledge of Robnett's doings there, and I asked him if he wanted me to go back into the cage, and he said yes, and I said that under the circumstances, I couldn't do it, and I didn't go back.

Q. Now, they had been investigating Robnett's shortages, had they not, at that time? A. Yes.

Q. And did he tell you that Robnett had embezzled a large sum of money from the bank?

A. He didn't make any statement like that. When the bookkeepers discovered it they handed it to me—the report—and I handed it to Mr. Kettenbach.

Q. You looked over the report, did you?

A. Just their report which was—

Q. Do you remember what the report showed?

(Testimony of John E. Chapman.)

A. No, except the amount was just about what you stated.

Q. About \$137,000.00? A. Yes, sir.

Mr. TANNAHILL.—That is all. [2483—2153]

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Chapman, you were asked if you weren't charged with an offense, and if Mr. Frank Kettenbach swore to the complaint. I will ask you if were not, under that charge, held for the action of the grand jury? A. I was.

Q. And the grand jury had its hearing the following October, did it not? A. It did.

Q. And you appeared before that grand jury, did you not? A. I did.

Q. And so did Mr. Frank W. Kettenbach, who swore to that charge? A. He did.

Q. I will ask you whether or not the grand jury didn't indict Mr. Frank W. Kettenbach of abstracting \$137,000.00 from the Lewiston National Bank, and did not return a charge against you?

A. It did, yes, sir.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Robnett testified in your favor before the grand jury, didn't he?

A. I don't know what he testified to.

Q. That is your understanding of it, isn't it?

A. I have no reason for thinking that way, because the testimony of the grand jury was not given to me.

Q. Don't you know that Mr. Robnett told you that

(Testimony of John E. Chapman.)

he testified in your favor? A. No.

Q. To exonerate you? [2484—2154] A. No.

Q. Don't you know that Robnett did exonerate you? A. I don't know.

Q. Don't you know that he testified against Frank Kettenbach?

A. I don't know what his testimony was.

Q. You are on friendly terms with Robnett, are you not? A. Well, not particularly.

Q. Your father furnished Robnett's bond, did he not?

A. I don't know whether he did or not, but I believe he did.

Q. Don't you know that he also indemnified Harry Liden and Sage Achin and someone else who went on it? A. I don't.

Q. You heard him say that he furnished Robnett's bond, did you not?

A. He was considering it. I don't know whether he finally completed the arrangements or not. I don't know what the arrangements in connection with it were.

Q. You are also on friendly terms with Harvey J. Steffey, are you not? A. I am.

Q. I don't remember your answer, but you are on friendly terms with Robnett, aren't you, Clarence Robnett?

A. Yes, but, as I say, not especially friendly.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all, Mr. Chapman.
[2485—2155]

[Testimony of Ivan R. Cornell, for Complainant.]

IVAN R. CORNELL, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Ivan R. Cornell? A. Yes.

Q. Where do you reside, Mr. Cornell?

A. In Portland.

Q. Where did you reside in 1903?

A. Why, most of that year I was in Lewiston, Idaho.

Q. Where did you reside in June, 1903?

A. In Lewiston, Idaho.

Q. And do you remember how long you had resided there at that time?

A. Why, I think in the neighborhood of eight or nine months.

Q. Did you know the defendant George H. Kester at that time? A. Yes, sir.

Q. How long had you known him?

A. At that time?

Q. Yes.

A. Why, I guess about 13 or 14 years. That is, I first became acquainted with him about 13 or 14 years previous to that time.

Q. Where did you meet him first?

A. Why, I think while attending the Bishop Scott Academy here in Portland.

Q. Do you know the defendant William Dwyer?

A. Why, slightly, yes.